LING PEEK HOE & ANOR v. DING SIEW CHING & ORS AND ANOTHER CASE

HIGH COURT MALAYA, IPOH
SU TIANG JOO JC
[CIVIL SUIT NOS: (M1) 22-203-2006 & (M3) 22-45-2008]
4 FEBRUARY 2022

Abstract – *A party who has suffered a civil wrong is entitled to claim for (i) the legal charges incurred as special damages incurred to redress the wrong; and (ii) general damages for the distress suffered in the course of undergoing legal proceedings to have the wrong redressed.*

DAMAGES: *Assessment – Liability – Finding of liability premised on fraud – Judgment obtained for special, general, punitive and exemplary damages to be assessed – Whether claimants could claim special damages for losses not specifically pleaded – Whether claimants entitled to all legal charges expended on indemnity basis – Whether quantum of legal charges excessive and unforeseeable – Whether there was evidence of payment – Whether special damages claimed adequately proven – Whether amount of damages claimed for fair and reasonable – Whether claimants to prove how much was to be claimed from each defendant*

In 2006, the plaintiffs commenced a legal action in the High Court against the defendants premised on fraud. The trial judge pronounced judgment favouring the plaintiffs ('judgment') and the defendants were found liable for the fraudulent transfer which was facilitated by the first defendant, an advocate and solicitor, of the first plaintiff's properties to the third and fifth defendants. The properties fraudulently transferred consisted of lands ('Kg Selamat lands') and the first plaintiff's shophouse ('shophouse'). Six years later, the plaintiffs obtained a judgment for special, general, punitive and exemplary damages to be assessed. The defendants appealed to the Court of Appeal against the judgment and they succeeded. The judgment was set aside. The plaintiffs then appealed to the Federal Court and they succeeded. The said judgment was ordered to be restored. There were three applications to review the decision of the Federal Court, with the second and third review applications struck out for abuse of process of court and the defendants and their lead counsel found guilty of contempt of court. In this court, the issues raised by the defendants were (i) whether the plaintiffs could claim special damages for losses that were not specifically pleaded as, according to the defendants, the omission by the plaintiffs to apply to amend the statement of claim to particularise their claim for special damages was fatal to their claim and therefore, the entire claim of RM3,450,051.76 stood dismissed ('pleading point'); (ii) whether legal fees were claimable by the plaintiffs and

whether the quantum of the legal charges were excessive, unforeseeable and there was no evidence that the same had all been paid; (iii) whether the special damages claimed by the plaintiffs were adequately proven ('quantum of legal charges point'); (iv) whether the amount claimed for general damages was fair and reasonable; (v) whether the amount claimed for punitive or exemplary damages was fair and reasonable; and (vi) for the assessment of damages, whether it was for the plaintiff to prove how much was to be claimed from each defendant.

Held (assessing damages payable by defendants to plaintiffs to be RM5,135,951.76 with interest):

(1) Based on the principle of *res judicata*, the pleading point could not be entertained by the court. Substantive justice would not be served to have the claim for special damages dismissed purely on this pleading point. The pleading point ought to have been taken during the trial which ran for 36 days. In the trial leading to the judgment and the appeals against the judgment before the Court of Appeal and the Federal Court, the pleading point was not taken. It was therefore too late now for the defendants to take up the pleading point. With the Federal Court having restored the judgment, it was for this court to proceed with the assessment of the special, general, punitive and exemplary damages, adjudged to be payable by the defendants to the plaintiffs. (paras 18, 20, 25 & 26)

(2) The exact amount sought by way of special damages was set out in the plaintiffs' affidavit with the defendants filing their respective affidavits making replies thereto before the assessment of damages. Documents were bundled and exchanged. The affidavits filed and exchanged on the damages sought with the evidence marshalled to support the claim duly set out therein, were as good as pleadings. (paras 32 & 34)

(3) On giving credit for any benefit received, the plaintiffs conceded that the sum of RM140,000 received by them by way of costs as well as a double claim for refresher of RM4,000 for a court attendance should be deducted from the legal expenses as they were claiming under special damages. In the circumstances, the claim for the legal fees and expenses on an indemnity basis by way of special damages was appropriate. (paras 49 & 50)

(4) The challenge on the quantum of legal charges point was without merit. When the plaintiffs initiated the suit on 18 August 2006, they submitted to due process which allowed a party aggrieved by any decision at first instance to appeal, commonly referred to as one strike two appeals. The parties took their rights of appeal seriously as could be seen from the numerous appeals filed and in fact, they initiated and pursued three review applications in the Federal Court. Having the

benefit of hindsight to mount a challenge on excessive and unforeseeable legal charges after 15 years of litigation when the defendants had been involved in the same including the appeals and three review applications at the Federal Court was wholly without merit. (paras 63 & 66)

(5) An order for damages to be assessed is wider than an order for costs. The courts have the discretion to allow legal fees incurred by an aggrieved party in addition to the costs awarded. Legal fees are a *specie* of special damages which are claimable and on top of costs. Further, in an assessment of damages for fraud, all losses are claimable on the basis of full indemnity. There was fraud found against the defendants after the trial by the High Court leading to the judgment and this judgment was restored by the Federal Court. The plaintiffs were, therefore, entitled to the legal fees and expenses on a full indemnity basis. With the plaintiffs to be indemnified against the legal charges incurred, the plaintiffs' claim for legal charges were awarded but in the sum of RM2,604,000 by way of special damages. (paras 76, 78, 79, 80 & 111)

(6) With the reliefs granted in the judgment after it was decided that the shophouse had been transferred from the first plaintiff to the third to fifth defendants fraudulently and therefore, being null and void, this would re-instate the first plaintiff's title and displace any right of the third to fifth defendants to deal with the property, including to resell it to the second plaintiff. Therefore, the efforts and expenses incurred to recover the shophouse were reasonable and ought to be indemnified and it did not lie in the mouths of the defendants to complain that such efforts were unreasonable when the situation was one brought about by themselves and which was held to have been done fraudulently. In the circumstances, the plaintiffs were awarded the sum of RM464,433.16 incurred by the second plaintiff to recover the shophouse. (paras 123 & 124)

(7) The challenge to the travelling expenses claim of RM16,000 premised on double claims, lack of petrol bills, toll receipts and incurring unnecessary expenses by filing/serving documents by hand instead of using the courier service, were without merit on the grounds that there were no toll for trips from Sitiawan to Ipoh; for trips to Putrajaya payment of toll charges using the Touch 'n Go facility would not yield any receipts and to save costs the second plaintiff used his own car and by driving himself for the trips undertaken as well as to transport the plaintiffs' counsel for the numerous court attendances without any claim for remuneration for the services, was fair and reasonable. The claim for RM16,000 for travelling expenses was allowed. (paras 132, 133 & 135)

(8) Having defrauded the plaintiffs of their properties through trickery and cheating, refusing to obey the court orders which saw them being found guilty of contempt of court on more than one occasion and in the process, taking the plaintiffs through 15 years of litigation with its attendant feelings of anxiety as and when an application was being pursued, heard and seemingly disposed of only to be met with an appeal and yet more applications with more appeals and in the process, with both plaintiffs losing their wives, one through disease and another through divorce proceedings, the RM1,000,000 sought by the plaintiffs was reasonable for all the mental distress and hardship suffered by them. (para 150)

(9) Considering all the facts and circumstances and the conduct of the defendants pre and post judgment, the plaintiffs' claim for a further sum of RM1,000,000 as punitive or exemplary damages against the defendants was reasonable so as 'to teach the wrongdoer that tort does not pay'. (para 158)

(10) The said judgment did not say that the damages ought to be apportioned as between the defendants *inter se*. A judgment against more than one judgment debtor would mean that the liability is joint and several. The second to fifth defendants could have availed themselves of the provision of s. 10 of the Civil Law Act 1956 and O. 16 r. 1(1)(v) of the Rules of Court 2012 for this issue to be determined at trial. They did not. Therefore, the court declined to accede to the second to fifth defendants' prayer for the liability of the defendants to be apportioned at this stage without the benefit of this issue having been tried. (para 165)

Case(s) referred to:

Abdul Razak Datuk Abu Samah v. Shah Alam Properties Sdn Bhd & Another Appeal [1999] 3 CLJ 231 CA ***(refd)***

Akai Holdings Ltd (In Compulsory Liquidation) v. Everwin Dynasty Ltd, & Ors (No. 2) [2016] 3 HKC 307 ***(refd)***

Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd [2012] 9 CLJ 352 HC ***(refd)***

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Brassart J Marcelle v. R&P International Accounting Affairs Ltd [2017] HKEC 1091 ***(refd)***

Chai Chee Chin & Ors lwn. Tetuan Zahari Ong & Co [2006] 8 CLJ 84 HC ***(refd)***

Dadourian Group International Inc & Ors v. Simms & Ors [2006] EWHC 2973 (Ch) ***(refd)***

Doyle v. Olby (Ironmongers) Ltd [1969] 2 All ER 119 ***(refd)***

Eu Sim Chuan v. Kris Angsana Sdn Bhd [2007] 7 CLJ 89 HC ***(refd)***

Forever Up Holdings Ltd v. Tong Yan Wa [2018] HKCFI 2775 ***(refd)***

Golden Star & Ors v. Ling Peek Hoe & Anor And Another Appeal [2015] 1 LNS 940 CA ***(refd)***

Golden Star & Ors v. Ling Peek Hoe & Ors [2021] 3 CLJ 443 FC ***(refd)***

Goo Sing Kar v. Dato' Lim Ah Chap & Ors [2013] 2 CLJ 936 CA ***(refd)***

Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd [1997] 2 CLJ 104 CA ***(refd)***
Heritage Grand Vacation Club Bhd v. Pacific Fantasy Vacation Sdn Bhd [2016] 7 CLJ 679 CA ***(refd)***
HSBC Bank Malaysia Bhd v. Tirathrai Sdn Bhd [2009] 1 CLJ 286 HC ***(refd)***
Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC ***(refd)***
Khairul Sham Ahmad & Anor v. Yesudass Michaelsamy [2005] 2 CLJ 195 HC ***(refd)***
Kris Angsana Sdn Bhd v. Eu Sim Chuan & Anor [2007] 4 CLJ 293 CA ***(refd)***
Kuan Pek Seng v. Robert Doran & Ors And Other Appeals [2012] 1 LNS 775 CA ***(refd)***
Lai Foh & Sons Sdn Bhd v. Skrine & Co [2001] 3 CLJ 185 HC ***(refd)***
Lau Yang Kim v. Rescom Australia Sdn Bhd & Anor [2020] 4 CLJ 130 HC ***(refd)***
Lembaga Kumpulan Wang Simpanan Pekerja v. Edwin Cassian Nagappan [2021] 7 CLJ 823 FC ***(refd)***
Lim Tee Hin v. Ledchumanan Nagappan [2004] 3 CLJ 285 HC ***(refd)***
Ling Peek Hoe & Anor v. Ding Siew Ching & Another Appeal [2017] 7 CLJ 641 FC ***(refd)***
Lua & Mansor v. Tan Ah Kim [2017] 2 CLJ 175 CA ***(refd)***
MD Biomedical Engineering (M) Sdn Bhd v. Goh Yong Khai [2021] 6 CLJ 30 CA ***(refd)***
Minty Holdings Sdn Bhd v. JB Properties Sdn Bhd; SK Brothers Realty (Third Party) [1998] 1 LNS 214 HC ***(refd)***
MSIG Insurance (M) Bhd v. Matrix Cooling (M) Sdn Bhd [2020] 1 LNS 1834 HC ***(refd)***
Ng Kim Hoong & Anor v. Tetuan YH Teh & Quek [2015] 10 CLJ 561 HC ***(refd)***
Non-No Fashion Wholesale Ltd v. Chung Kam Wing & Another [2001] HKEC 89 ***(refd)***
Ong Ah Long v. Dr S Underwood [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 FC ***(refd)***
Pacific Electric Wire & Cable Co Ltd v. Texan Management Ltd [2013] HKEC 1623 ***(refd)***
Rookes v. Barnard And Others [1964] 1 All ER 367 ***(refd)***
Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] 1 LNS 500 CA ***(refd)***
Seto Wai Leung Benny v. Se To Shuk Yee [2018] HKCFI 2653 ***(refd)***
Shen & Sons Sdn Bhd v. Jutawarna Development Sdn Bhd & Ors [2015] 8 CLJ 125 HC ***(refd)***
Sia Hiong Tee & Ors v. Chong Su Kong & Ors [2015] 8 CLJ 1173 FC ***(refd)***
Sigma Glove Industries Sdn Bhd & Ors v. Ong Chin Kok & Anor [2019] 1 LNS 1370 HC ***(refd)***
Sim Thong Realty Sdn Bhd v. Teh Kim Dar [2003] 3 CLJ 227 CA ***(refd)***
Singh And Another v. Observer Ltd [1989] 3 All ER 777 ***(refd)***
Sitti Rajumah & Anor. v. Mohd Rafiuddin Elmin [1996] 4 CLJ 274 HC ***(refd)***
Sonic Finance Inc & Anor v. Halim Mohammad & Ors [2019] 1 LNS 651 HC ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor (No 2) [2010] 1 CLJ 419 FC ***(refd)***
Tan Thiam Hock v. Corrugated Offset Packaging (M) Sdn Bhd & Anor [2011] 1 LNS 592 HC ***(refd)***
TAZ Logistics Sdn Bhd v. TAZ Metals Sdn Bhd & Ors [2020] 5 CLJ 426 HC ***(refd)***
Tetuan Azim, Tunku Farik & Wong v. Tetuan Ong Partnership [2021] 10 CLJ 258 CA ***(refd)***
Thompson v. Commissioner Of Police Of The Metropolis [1997] 3 WLR 403 ***(refd)***
Trans Elite Equipment Rental Sdn Bhd v. PSC-Naval Dockyard Sdn Bhd [2003] 4 CLJ 270 HC ***(refd)***
UDA Holdings Bhd v. Melewar Leisure Sdn Bhd [2008] 10 CLJ 622 HC ***(refd)***
Yap Boon Hwa v. Kee Wah Soong [2019] 1 LNS 1157 CA ***(refd)***
Yap Soo Ping & Anor v. Kee Wah Soong [2018] 1 LNS 1020 HC ***(refd)***
Yii Ping Hiong & Anor v. Tseng Choon Chin & Ors [2009] 1 LNS 756 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, ss. 10, 11(1)
Legal Profession Act 1976, ss. 116(1), (2), 121
Penal Code, ss. 191, 192, 193
Rules of Court 2012, O. 16 r. 1(1)(c), O. 28 r. 8, O. 34 r. 2(2)(b)(ii), O. 37 r. 6, O. 42 r. 12, O. 59 r. 8

For the plaintiffs - Edmund Lim Yun; M/s Hong Chew King & Co
For the 1st defendant - Su Keong Siew; M/s KS Su & Mah
For the 2nd to 5th defendants - Tan Lee Kiat & Alison Goh; M/s Chieng Lum & Assocs

Reported by Lina E

JUDGMENT

Su Tiang Joo JC:

Introduction

[1] In 2006, the plaintiffs commenced a legal action against the five defendants premised on fraud. Six years later, after a trial conducted over 36 days, they obtained a judgment for special damages, general damages as well as punitive and exemplary damages to be assessed. The assessment which commenced on 8 February 2021 was interrupted by the COVID-19 pandemic. A total of five days was taken with closing oral submissions presented on 24 November 2021 and decision scheduled for 10 January 2022.

[2] In between the commencement of the suit at the High Court in 2006 and the trial as well as in between the trial and assessment of damages, there were appeals to the Court of Appeal and to the Federal Court. After the Federal Court, there were three applications to review the decision of the Federal Court with the second and third review application struck out for abuse of process of court and the defendants and their lead counsel found guilty of contempt of court.

[3] Over and on top of the trial at the High Court and its related appeals to the Court of Appeal and Federal Court plus three review applications at the Federal Court, there were several contentious interlocutory applications requiring determination by the courts and a trawl through the law reports on this action will yield an abundant harvest of hits.

Background Facts

[4] On 28 November 2012, the learned trial judge, His Lordship, Hassan bin Ab Rahman JC ("LTJ") pronounced judgment ("the said judgment") (see R41 p. 53 para. 4 jilid 1) favouring the plaintiffs as follows:

> ADALAH DIHAKIMI bahawa perjanjian-perjanjian jual beli antara plaintif pertama dengan defendan ketiga, keempat dan/atau kelima untuk GM 3896 (dahulu EMR 2358) Lot 2563 dan GM 3895 (dahulu EMR 2359) Lot 2564 kedua-dua Mukim Sitiawan adalah diisytiharkan batal dan tidak sah.

DAN ADALAH DIHAKIMI bahawa borang-borang pindah milik untuk GM 3896 (dahulu EMR 2358) Lot 2563 dan GM 3895 (dahulu EMR 2359) Lot 2564 kedua-dua Mukim Sitiawan dan PN 104828 Lot 34911 (dahulu HS (D) Dgs 5664 PT17562) Mukim Sitiawan daripada plaintif pertama kepada defendan ketiga, keempat dan kelima adalah diiystiharkan batal dan tidak sah.

DAN ADALAH DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif ganti rugi khas, am, punitif dan teladan tertakluk kepada taksiran oleh Pendaftar.

DAN ADALAH DIHAKIMI bahawa tuntutan balas defendan ketiga, keempat dan kelima terhadap plaintif pertama adalah ditolak dengan kos.

DAN AKHIRNYA DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif faedah dan kos tindakan-tindakan ini untuk ditaksir oleh Pendaftar sekiranya tidak dipersetujui oleh plaintif-plaintif dan defendan-defendan. (emphasis added)

[5] In summary, the LTJ found all the defendants liable for the fraudulent transfer, which was facilitated by the first defendant, an advocate and solicitor, of the first plaintiff's properties to the third and fifth defendants. The first defendant is the sister of the third to fifth defendants.

[6] The properties that were fraudulently transferred consist of:

(i) the first plaintiff's lands held under issued document of titles GM 3896 Lot 2563 and GM 3895 Lot 2564 both in Mukim Sitiawan (the "Kg Selamat Land"); and

(ii) the first plaintiff's shophouse held under issued document of title PN 104828 Lot 34911 in Mukim Sitiawan (the "No. 59 Taman Ilmu" property).

[7] The assessment of damages was carried out over six days. Out of the six days, save for one day, the other five days of hearing were conducted with the aid of remote communication technology using the Zoom platform.

[8] A total of ten witnesses were called, five for the plaintiffs, one for the first defendant and four for the second to fifth defendants. The following witness statements (R45-PWS1, R44-PWS2, R46-PWS3, R51-D1WS1, R63-D2WS1, R60-D2WS2 and R61-D2WS3) were exchanged with a total of nine agreed bundles of documents (R41-Jilid 1; R42-Jilid 2, R43-Jilid 3, R56-Jilid 7, R69-Jilid 9, R50-Jilid 4, R-Jilid 5 (BOD of D2 to D5), R62-Jilid 6 and R55-Jilid 8) filed.

[9] The first defendant was represented by the law firm of M/s KS Su & Mah whereas the second to fifth defendants were represented by the law firm of M/s Chieng Lum & Associates.

[10] Save for whether the liability is to be borne equally between the first defendant on the one part and the second to fifth defendants on the other part, the first defendant adopts the submissions of the second to fifth defendants.

A **Summary Of Claims**

[11] The following summary of claims made by the plaintiffs are:

(i) Special Damages

(a) Legal Fees	RM2,918,000
B (b) Hong Leong Bank Bhd loan for No. 59 Taman Ilmu property	RM464,433.16
(c) Travelling Expenses	RM16,000
C (d) Search & Miscellaneous Expenses	RM51,618.60
Sub-total	RM3,450,051.76

(ii) General damages for time spent, mental distress and physical strain the plaintiffs purportedly suffered and endured for the duration of the litigation and all such expenses reasonably incurred in the sum of:

D RM1,000,000

(iii) Punitive and exemplary damages of: RM1,000,000

Total RM5.140,151.76

E (iv) Interest on the damages awarded from the date of the filing of the writ and statement of claim (18 August 2006) at 5% p.a. until full realisation.

Summary Of Issues

[12] The bulk of the plaintiffs' claim fall under special damages.

F **[12A]** The issues as summarised by learned counsel for the second to fifth defendants are as follows:

(i) Whether the plaintiffs can claim special damages for losses that were not specifically pleaded;

G (ii) Whether legal fees are claimable by the plaintiffs;

(iii) Whether the special damages claimed by the plaintiffs are adequately proven;

(iv) Whether the amount claimed for general damages is fair and reasonable; and

H

(v) Whether the amount claimed for punitive or exemplary damages is fair and reasonable.

[12B] Counsel for the first defendant raised a further issue during closing submissions for the assessment of damages that it is for the plaintiff to prove I how much is to be claimed from each defendant. However, counsel for the second to fifth defendants disagreed and submitted it should be apportioned equally as between the first defendant (50%) and the second to fifth defendants (50%).

Pleading Point

[13] The defendants submit that save for a general prayer for special and general damages to be assessed at para. 9 of the statement of claim which is reproduced below, the plaintiffs have failed to plead the exact amount of loss claimed:

> 9. Akibat daripada perbuatan Defendan-Defendan di atas, Plaintif-Plaintif telah mengalami kerugian dan kehilangan, di mana Plaintif-Plaintif menuntut:
>
> 9.1 Deklarasi bahawa perjanjian jual beli yang didakwa untuk No. 2563 and 2564 Kg. Selamat dan No. 31 Taman Ilmu adalah batal dan tidak sah;
>
> 9.2 Deklarasi bahawa Perjanjian Sewa Olok-Olok tersebut adalah batal dan tidak sah;
>
> 9.3 Deklarasi bahawa Borang Pindah milik yang didakwa untuk 3 Hartanah tersebut dan No. 31 Taman Ilmu daripada P1 kepada D2 dan/atau pemilik-pemiliknya adalah batal dan tidak sah atas sebab salah nyata, frod, pemalsuan dan/atau instrument tidak cukup atau tidak sah;
>
> 9.4 Perintah lanjutan berikutan deklarasi-deklarasi tersebut di atas;
>
> **9.5 Ganti rugi khas dan am untuk ditafsirkan;**
>
> 9.6 Gantirugi punitif dan teladan untuk ditafsirkan;
>
> 9.7 Faedah
>
> 9.8 Kos; dan
>
> 9.9 Perintah atau relif lain yang Mahkamah Mulia ini anggap sesuai dan berpatutan. (emphasis added)

[14] It would be convenient to deal with the pleading point raised by the defendants at this juncture. They assert that the omission by the plaintiffs to apply to amend the statement of claim dated 17 August 2006 to particularise their claim for special damages is fatal to their claim. Therefore, they submit that the entire claim of RM3,450,051.76 stands dismissed (R83 para. 35).

[15] The following authorities cited by the defendants for the rule on pleadings and the principles extracted therefrom are set out hereunder:

(i) In the Federal Court case of *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 2 MLJ 324, Syed Agil Barakbah FJ held that:

> It is a well-established principle that special damages in contrast to general damages, have to be specifically pleaded and strictly proved. ...
>
> The reason that special damages have to be specifically pleaded is to comply with its object which is to crystallise the issue and to enable both parties to prepare for trial (per Edmund Davies, L.J. in *Domsalla v. Barr* [1969] 1 WLR 630, 635. In special damages claims the exact loss must be pleaded where the precise amount

A of item of damages has become clear before the trial either because it has already occurred and so become crystallised or because it can be measured with complete accuracy (*MacGregoron on Damages* 14th edition page 1012 para 1498). The purpose is to put the defendants on their guard and tell them what they have to meet when the case comes on trial (per Cotton, L.J. in *Phillips v. Phillips* (1878) 4 QBD
B 127, 139).

(ii) In the High Court case of *Shen & Sons Sdn Bhd v. Jutawarna Development Sdn Bhd & Ors* [2015] 8 CLJ 125; [2016] 7 MLJ 183, S Nantha Balan JC (now JCA) held that:

C [68] ... In the present case, there was no attempt by the plaintiff to amend the statement of claim prior to the hearing of assessment of damages. Before me, counsel for the plaintiff said that it was not necessary to plead special damages and in any event, if the other side had raised an objection, then she would have made the necessary application to amend. Thus, she complained that she
D had been deprived of the opportunity to amend the statement of claim because the other side raised no objections in respect of the lack of pleading on special damages. She said that in any event, there is no prejudice to D2 and D3 as they knew exactly what was being claimed as these were all stated in the witness statements of the plaintiff's witnesses.

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[69] In my view, the plaintiff cannot use the silence or inertia of counsel for D2 and D3 as an excuse for not amending the statement of claim as the rule relating to pleading special damages is a mandatory legal requirement and if the statement of claim is inadequate as is clearly the case in these appeals, then the plaintiff
F has taken an unnecessary risk in proceeding with the hearing of assessment with absolutely nothing in the statement of claim in relation to special damages. That was a strategic mistake on their part.

[70] The body of case law is clear and unambiguous. The
G procedural rule relating to pleading special damages is simple but strict. Special damages must be specifically pleaded. If the statement of claim is devoid of any pleading on special damages, then evidence on specials damages cannot be adduced. I cannot over emphasise that the rule is strict in its application. It may have been different if parties had gone on record to state unequivocally
H that no objection will be taken to the inadequacy of pleadings in respect of special damages. Had that been done, then the other side would be deemed to have 'waived' their right to object, but not otherwise. Here, D2 and D3's silence cannot be equated with consent or be deemed as a waiver.

I (iii) In *Lau Yang Kim v. Rescom Australia Sdn Bhd & Anor* [2020] 4 CLJ 130, Amarjeet Singh JC held as follows:

> (1) Special damages, in contrast to general damages, have to be specifically pleaded and strictly proved. ... Legal fees are ascertained expenses and, therefore, particularity is necessary to warn the defendant of what is being claimed or the claims that he will be confronted with at the trial. The DR erred in law when awarding, as general damages, the legal fees and related legal expenses incurred by the plaintiff.

(iv) That a party is not allowed to rectify his own omission to specifically plead special damages by relying on witness statements (in this case affidavits) to improve the defective pleading with reliance placed upon the High Court case of *UDA Holdings Bhd v. Melewar Leisure Sdn Bhd* [2008] 10 CLJ 622; [2009] 2 MLJ 498 where Abdul Malik Ishak J held that:

> [173] I would answer this question in the negative for the following reasons:
>
> (i) Melewar did not be plead the particulars of loss and damage in its pleadings and therefore must be precluded from relying on the evidence adduced to improve its pleadings (*Yew Wan Leong*'s case) ...

(v) The aforesaid case *UDA Holdings Bhd* (*supra*) was adopted by the recent High Court case of *MSIG Insurance (M) Bhd v. Matrix Cooling (M) Sdn Bhd* [2020] 1 LNS 1834; [2020] MLJU 2091 where Ong Chee Kwan JC held that:

> [56] Flowing from the plaintiff's own failure to plead their particulars of special damages in their statement of claim, they shall be precluded from relying on the evidence adduced (if any, which is denied) during trial to improve their pleading and/or claim. ...
>
> [57] S Nantha Balan J (as he then was) in the case of *Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors* [2016] 7 MLJ 183 at p. 192 ruled that the omission to plead special damages is not in compliance with O. 18 r. 12(1) and (2) of the Rules of Court 2012 and is fatal, notwithstanding that there is evidence to prove the quantum.

[16] Reliance was also placed by the defendants upon the oft-quoted authority of *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196 decided by Sharma J for the trite principle that parties are bound by their pleadings.

[17] The defendants proceeded to submit that this honourable court should not help to improve the plaintiffs' case and that the plaintiffs' case must stand or fall based squarely on what has been pleaded. Reliance was placed upon the decision of the Court of Appeal where Justice Hamid Sultan Abu Bakar JCA in the case of *Heritage Grand Vacation Club Bhd v. Pacific Fantasy Vacation Sdn Bhd* [2016] 7 CLJ 679; [2016] 4 MLJ 389 held that:

A [4] It is well-established that it is not the function of the court to build a case for the plaintiff/defendant inconsistent with the pleaded case. In *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 2 MLJ 152, the Supreme Court had in strong terms held, and which still stands as a 'gold standard' in pleading rules and evidence, as follows:

B > It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The
C > trial of a suit should be confined to the pleas on which the parties are at variance.

[18] In my view, in the circumstances of this case based upon the principle of *res judicata*, the pleading point cannot be entertained by this court. And for the reasons that now follow, substantive justice will not be served to have
D the claim for special damages dismissed purely on this pleading point ("pleading point").

Res Judicata

[19] The said judgment leading to the assessment exercise provide as
E follows (R41 p. 53):

> **DAN ADALAH DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif ganti rugi khas**, am, punitif dan teladan tertakluk kepada taksiran oleh Pendaftar.
>
> (emphasis added)

F **[20]** The pleading point ought to have been taken during the trial which ran for 36 days. It was not.

[21] Instead, the defendants were adjudged to pay the plaintiffs special damages to be assessed premised upon the pleadings filed and in particular,
G para. 9 of the statement of claim as highlighted by the defendants and reproduced above.

[22] The defendants appealed to the Court of Appeal against the said judgment. They succeeded and the said judgment was set aside. The grounds of judgment of the Court of Appeal is published as *Golden Star & Ors v. Ling*
H *Peek Hoe & Anor And Another Appeal* [2015] 1 LNS 940.

[23] The plaintiffs then appealed to the Federal Court. They succeeded and on 20 June 2017 the said judgment of the LTJ was ordered to be restored. The grounds of judgment of the Federal Court is published as *Ling Peek Hoe & Anor v. Ding Siew Ching & Another Appeal* [2017] 7 CLJ 641.

I **[24]** The defendants applied to review the Federal Court judgment. They failed. Undeterred they applied a second time and yet a third time with both the second and third review applications heard together and dismissed. Not

only was the second and third review applications unanimously dismissed by the Federal Court, the defendants and their lead counsel were found guilty of contumacious and disrespectful conduct in proceeding with the filing of the second and third review applications and were each found guilty of contempt of court for disobeying the court order, see *Golden Star & Ors v. Ling Peek Hoe & Ors* [2021] 3 CLJ 443 FC.

[25] In the trial leading to the said judgment and the appeals against the said judgment before the Court of Appeal and the Federal Court, the pleading point was not taken. It is, therefore, now too late for the defendants to take up the pleading point, it being *res judicata*, see *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 where Peh Swee Chin FCJ speaking for the Supreme Court said:

> What is *res judicata*? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicature*. When a matter between two parties has been adjudicated by a Court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata*, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that it is in the public interest that there should be finality in litigation – interest *rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action – *nemo debet bis vexari pro eadem causa*. Both maxims are the rationales for the doctrine of *res judicata*, but the earlier maxim has the further elevated status of a question of public policy.
>
> Since a *res judicata* creates an estoppel *per rem judicatum*, the doctrine of *res judicata* is really the doctrine of estoppel *per rem judicatum*, the latter being described sometimes in a rather archaic way as estoppel by record. Since the two doctrines are the same, it is no longer of any practical importance to say that *res judicata* is a rule of procedure and that an estoppel *per rem judicatum* is that of evidence. Such dichotomy is apt to give rise to confusion.
>
> The starting point ought to be the celebrated passage by Wigram, V.C., in the case of *Henderson v. Henderson* [1843] 3 Hare 100 115 which is:
>
> > *The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.* (emphasis added)

[26] With the Federal Court having restored the said judgment, it is for this court to proceed with the assessment of damages, special, general, punitive and exemplary, adjudged to be payable by the defendants to the plaintiffs.

[27] Before leaving this point, lest it be asserted that there was an oversight by this court in failing to take into account that the said judgment was on liability and not on damages, in my view, the said judgment is clear on what damages were awarded for purposes of assessment. On this, I hearken to the *ratio decidendi* laid down by the Court of Appeal in *Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd* [1997] 2 CLJ 104 where Gopal Sri Ram JCA (then) said:

> If authority is needed for the proposition which has commended itself to us, it is to be found in *Government Of Malaysia v. Dato Chong Kok Lim* [1973] 1 LNS 35 which was drawn to the attention of Counsel during argument and in which there appears the following passage in the judgment of Sharma J (at p. 76):
>
> > In *Satyadhyan Ghosel And Others v. Sint Deorajin Dobi & Another* AIR [1960] SC 941, the statement of the law on the subject is given thus:
> >
> > > *The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall be not adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again*. This principle of *res judicata* is embodied in relation to suits in s. 11 of the Code of Civil Procedure; but even where s. 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation.
> >
> > *The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.*
> >
> > *The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.*
> >
> > *A decision given by a court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. (See Peareth v. Marriott [1883] 22 Ch. D. 182, Hook v. Administrator-General of Bengal and Others LR 48IA 187 and In the Matter of the Trusts of the Will of Tan Tye (Deceased) Yap Liang Neo v. Tan Yew Ghee and Another [1936] MLJ 141, 147-151). Parties cannot raise a second time in the same suit an issue that has already been determined either expressly or by necessary implication*. (See *Louis Dreyfus v. Aruna Chalayya* LR 58 IA 381).
>
> (emphasis added)

Other Grounds

[28] Whilst the principle for *res judicata* would be sufficient to deal with the pleading point, by reason of the industry of learned counsel for the defendants in pursuing the same, for the following further reasons, I find it to be in any event, without merit.

[29] The authorities relied upon by the defendants on the pleading point can be easily distinguished in that, in none of these cases, was there a judgment for special damages to be assessed after trial despite there being no particulars of damages being pleaded.

[30] In *Ong Ah Long* (*supra*), there was no separate trial for assessment of damages; in *Shen & Sons Sdn Bhd* (*supra*), there was not even a prayer for special damages; in *Lau Yang Kim* (*supra*), the order was only for assessment of general damages; *UDA Holdings Bhd* (*supra*) was a land acquisition case where the complaint was a failure to plead the breach of an alleged valuer's duty and in *MSIG Insurance* (*supra*), there was no order for the assessment of special damages.

Affidavits As Pleadings

[31] The underlying jurisprudence on strict adherence to the rule on pleadings is to do with procedural justice. It is to prevent surprise or ambush at trial. Its origins were at a time when oral evidence was led at trial with no advance notice given as to what evidence would be led. It is very different now. The evidence of the witnesses is in witness statements which are exchanged before the trial and this, in fact, with all due respect, better serve procedural justice as the opposite party knows exactly what is being sought. He even gets to weigh the strength of the evidence that would be led to prove the claim and prepare his case accordingly.

[32] In this case, the exact amount sought by way of special damages was set out in the plaintiffs' affidavit (WS1) dated 3 February 2021 with the defendants filing their respective affidavits making replies thereto before the assessment of damages. Documents were bundled and exchanged.

[33] Indeed, as pointed out by Mr Edmund Lim, learned counsel for the plaintiffs, O. 34 r. 2(2)(b)(ii) of the Rules of Court 2012 ("ROC 2012") expressly provides that during a pre-trial case management, affidavits can be ordered to stand as pleadings. There is a similar provision in O. 28 r. 8 of the ROC 2012.

[34] Whilst I had made no express order for affidavits to stand as pleadings for the assessment of damages, I had given case management directions for affidavits to be filed and exchanged for the assessment exercise. The depositions in the affidavits are declared to be true, in solemn form duly attested before a Commissioner for Oaths. The deponent is liable to be visited with penalties for imprisonment under the Penal Code (Revised 1997)

(Act 574) if he gives or fabricates false evidence, see ss. 191 to 193. In my considered opinion, the affidavits filed and exchanged on the damages sought with the evidence marshalled to support the claim duly set out therein, are as good as pleadings.

[35] Mr Tan Lee Keat, learned counsel for the second to fifth defendants in the course of presenting his oral submissions on 24 November 2021 raised the complaint that the three affidavits (R44, R45 and R46) of the plaintiffs were affirmed and filed on 3 February 2021 with the assessment commencing 8 February 2021 giving the defendants only five days to study them and he asserted this is unfair and had caught the defendants by surprise. To this, Mr Edmund Lim, learned counsel for the plaintiffs, replied that it is unfair for the defendants to take this point as the defendants could have sought time to reply and the plaintiffs would not have objected. To allow the assessment to be run its course until completion and then to raise this issue in closing submissions is an afterthought and ought not to be considered by this court.

[36] This court is of the view that the defendants' complaint is without merit. It is indisputable that the order of the Federal Court restoring the said judgment was made on 20 June 2017. The trial dates for the assessment of damages were fixed on 5 January 2021 to be undertaken over three days from 8 February 2021 to 10 February 2021. In fact, it ran for five days over a period of eight months on 8 February 2021, 9 February 2021, 10 March 2021, 16 March 2021 and 8 October 2021 with the extended period brought about by the COVID-19 pandemic and the attendant lockdown implemented nationwide. As from the 20 June 2017 when the Federal Court restored the said judgment until 2021 when directions were sought for the assessment of damages – a period of four years, the defendants could have sought further and better particulars of the claim for special damages but they did not. With the assessment having been undertaken over eight months, the defendants had ample time to consider the evidence led, and if necessary, sought for witnesses to be recalled for examination. They did not. Thus, I am of the view that the submissions by the plaintiffs that the complaint raised in closing submissions about being taken by surprise anchored upon the narrow period of five days between 3 February 2021 and 8 February 2021 is frivolous and clearly an afterthought and unmeritorious.

Instances Of Special Damages Assessed Without Pleadings

[37] It is, in fact, rather common for damages including that for special damages to be assessed by way of exchange affidavits without pleadings and examples that easily come to mind are an order for assessment of damages that often accompany an order for the removal of a caveat, see *MD Biomedical Engineering (M) Sdn Bhd v. Goh Yong Khai* [2021] 6 CLJ 30 CA, and on order for assessment of damages that accompany the setting aside of an order for injunction, see *Goo Sing Kar v. Dato' Lim Ah Chap & Ors* [2013] 2 CLJ 936; [2013] 3 MLJ 374 CA.

[38] We now come to the assessment of damages.

The Law On Assessment Of Damages

[39] This court is guided by the law laid down in O. 37 r. 6 of the Rules of Court 2012 that:

> Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

[40] This court agrees with the submissions of the plaintiffs that this court is and ought to also take into account all the facts and circumstances which took place between date of the said judgment of 20 June 2017 down to the trial of the assessment in 2021.

[41] As there is the issue of legal charges being claimed, learned counsel for the plaintiffs submit that the provisions of O. 59 r. 8 of the Rules of Court 2012 which is reproduced below would be relevant:

> The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account:
>
> (a) any offer of settlement under O. 22B;
>
> (b) the conduct of all the parties including conduct before and during the proceedings;
>
> (c) the conduct of the parties in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution;
>
> (d) ... (not relevant)

[42] And, the plaintiffs assert that the following circumstances are relevant for consideration in the assessment:

(i) the fact that there was never any offer of settlement from the defendants, whether before or after the Federal Court restored the said judgment in 2017;

(ii) attempts by the plaintiffs to reach out to the defendants for settlement of the damages to avoid further protracted litigation but without any avail (see line 932 p. 32 notes of evidence dated 9 February 2021 and line 653 p. 27 notes of evidence dated 16 March 2021);

(iii) barely one month after the Federal Court allowed the plaintiffs' appeal, the fifth defendant's wife, assisted by a lawyer in the first defendant's firm, entered private caveats on the first plaintiff's Kg Selamat Land under the pretext of it being matrimonial property so as to seek to frustrate the retransfer of this piece of property in breach of the said judgment when:

A (a) there was in fact no divorce proceedings between the fifth defendant and his wife. In fact, his wife even accompanied him to court earlier during the committal proceedings and for the trial of assessment of damages; and

B (b) there were no other similar caveats lodged by the fifth defendant's wife on his other various properties, including their matrimonial home at Lot 36943 where they lived together for 16 years (see line 569 to 666 pp. 24 to 28 notes of evidence dated 8 October 2021);

C (iv) the third to fifth defendants' continuous refusal to comply with the High Court order for mandatory injunction despite being re-instated by the Federal Court in 2017 compelling the plaintiffs to initiate committal proceedings against them (see High Court order dated 13 November 2019 encl. R34);

D (v) the second to fifth defendants' repeated attempts to review the Federal Court's order causing the plaintiffs to literally have no choice but to incur further legal fees in order to enforce their rights against the defendants before the assessment of damages could finally be set down for trial in 2021;

E (vi) it was brought to the court's attention that to compel the defendants to submit to the trial for assessment of damages with the view to bring this action to a conclusion, committal proceedings at the Federal Court were considered and the letter of agreement dated 11 March 2019 [R41 p. 179 Jilid 1] best describes the plaintiffs' predicament at the material time:

F > 3. *To answer to your query as to whether we can assure you that the matter would end at the 3rd review in the Federal Court, we regret that we are unable to make such an assurance*. In so far as the LAW is concerned, there is no limit to the number of times a party may resort to r. 137 of the Rules of the Federal Court 1995 no matter how frivolous the reasons may be.
>
G > Be that as it may, *as a drastic and final resort* to ensure that the defendants do not continue to abuse the court process, you may consider *applying to the FEDERAL COURT itself for committal proceeding against the defendants and their current solicitor for their conduct. It will be an uphill task and we do not guarantee any success in the matter.*
>
> (emphasis added)

H (vii) as it turned out for the plaintiffs, the Federal Court found the defendants and their counsel guilty of contempt of court where Her Ladyship, Hasnah Mohammed Hashim FCJ held:

I > [63] Despite having exhausted all the avenues to appeal their case, the respondents were recalcitrant by insisting on litigating by filing the applications for review as well as for the stay. From the time the Federal Court order was granted until the first review application was filed one year two months had lapsed followed by

> the filing of the second and third review applications. It is apparent to us that the respondents have unabashedly refused to comply with the High Court order affirmed and reinstated by this court. The non-compliance of a court order, and in this case an injunction, is a serious matter. Such behaviour to our mind, showcased total disregard and disrespect of the order granted by the Federal Court which tantamount to clear contempt of this court's order.
>
> ...
>
> [71] We are therefore, of the view that such conduct and behaviour of the respondents and HK were contumacious and disrespectful. In the circumstances of this case we are satisfied beyond reasonable doubt that the respondents and HK (Mohamed Haniff Khatri Abdulla) are guilty of contempt of court. see *Golden Star & Ors v. Ling Peek Hoe & Ors* [2021] 2 MLJ 259 and brought to a close the long extended fight on the said judgment setting the stage for the trial for the assessment of damages.

Measure Of Damage

[43] It is indisputable that the said judgment was restored by the Federal Court premised on findings of misrepresentation, fraud or conspiracy to defraud against all the defendants, see the decision of the Federal Court in *Ling Peek Hoe & Anor v. Ding Siew Ching & Another Appeal* [2017] 7 CLJ 641 at p. 652 paras. 34, 36 and 37.

[44] The measure of damages for fraud was established in the case of *Doyle v. Olby (Ironmongers) Ltd* [1969] 2 All ER 119, whereby Lord Denning held:

> In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment. The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties. *In fraud, they are not so limited. The defendant is bound to make reparation for all the actual damage directly flowing from the fraudulent inducement. The person who has been defrauded is entitled to say: "I would not have entered into this bargain at all but for your representation. Owing to your fraud, I have not only lost all the money I paid you, but, what is more, I have been put to a large amount of extra expense as well and suffered this or that extra damages." All such damages can be recovered: and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have been foreseen*.
>
> For instance, in this very case the plaintiff has not only lost the money which he paid for the business, which he would never have done if there had been no fraud: he put all that money in and lost it; but also he has been put to expense and loss in trying to run a business which has turned out to be a disaster for him. *He is entitled to damages for all his loss, subject,*

A *of course, to giving credit for any benefit that he has received*. There is nothing to be taken off in mitigation: for there is nothing more that he could have done to reduce his loss. He did all that he could reasonably be expected to do. (emphasis added)

[45] The principle laid down in *Doyle v. Olby* (*supra*) has been adopted by B our courts, see *Sim Thong Realty Sdn Bhd v. Teh Kim Dar* [2003] 3 CLJ 227; [2003] 3 MLJ 460 CA and *Kuan Pek Seng v. Robert Doran & Ors And Other Appeals* [2012] 1 LNS 775; [2013] 2 MLJ 174.

[46] The plaintiffs brought to the court's attention two cases which this court finds helpful where legal fees were awarded by way of damages in cases C involving fraud or deceit:

(i) *Dadourian Group International Inc & Ors v. Simms & Ors* [2006] EWHC 2973 (Ch) where damages for the tort of deceit was awarded. On the claims for legal and other incidental costs and expenses incurred in (i) defending claims in the New York action and the arbitration, as well as D prosecuting the counterclaim in the arbitration and resisting the application to remove the arbitrator, Warren J held as follows:

> The relevant costs have been incurred by DGI as a direct result of being embroiled in a dispute which would never have arisen if DGI had not acted in reliance on the misrepresentation. Leaving aside E for the moment the costs of the application in the New York litigation to prevent an arbitration in London, all of the costs of DGI in the litigation and the arbitration were incurred in fighting claims (either as claimant or defendant) on which it was wholly successful before the arbitrator. DGI was faced with a claim against it: it had no option but to defend it and quite properly made its F counterclaim. I say quite properly because it was successful which, retrospectively, shows that DGI's case was a proper one to defend and bring. DGI had no option but to defend the claim against it since to have capitulated would have resulted in a large damages claim against it. The counterclaim was really the other side of the G coin of the defence. Further, as DGI claims, the counterclaim was a reasonable attempt to recover from Charlton and would, had Charlton had any assets, have been an effective mitigation of any loss flowing from the misrepresentations. **In those circumstances, the costs, in my judgment, are in principle recoverable as damages. The same goes for the costs of the unsuccessful attempt** H **to remove the arbitrator**.
>
> (emphasis added)

(ii) *Yap Boon Hwa v. Kee Wah Soong* [2019] 1 LNS 1157; [2020] 1 MLJ 37 CA, a case involving an assessment of damages for fraudulent misrepresentation perpetrated by the second plaintiff upon the I defendant, the Court of Appeal held that legal fees incurred by the defendant in defending the action were reasonable and recoverable.

[47] In my view, on the facts of this case, the decision of the Federal Court in *Takako Sakao v. Ng Pek Yuen & Anor (No 2)* [2010] 1 CLJ 419; [2010] 2 MLJ 181 is instructive where the Federal Court took into account the conduct of the respondents who "set themselves upon a course to unlawfully deprive the appellant of her legitimate interest in the subject property" and considered "this to be an appropriate case to award costs on an indemnity basis at all levels."

[48] The authorities from Hong Kong are consistent in that a victim of fraud should be entitled to costs on an indemnity basis, see *Forever Up Holdings Ltd v. Tong Yan Wa* [2018] HKCFI 2775; *Seto Wai Leung Benny v. Se To Shuk Yee* [2018] HKCFI 2653; *Brassart J Marcelle v. R&P International Accounting Affairs Ltd* [2017] HKEC 1091; *Akai Holdings Ltd (In Compulsory Liquidation) v. Everwin Dynasty Ltd, & Ors (No. 2)* [2016] 3 HKC 307, *Non-No Fashion Wholesale Ltd & Others v. Chung Kam Wing & Another* [2001] HKEC 89; and *Pacific Electric Wire & Cable Co Ltd v. Texan Management Ltd* [2013] HKEC 1623.

[49] On giving credit for any benefit received, the plaintiffs conceded that the sum of RM140,000 received by them by way of costs as well as a double claim for refresher of RM4,000 for a court attendance on 26 March 2012 should be deducted from the legal expenses they are claiming under special damages.

[50] In the circumstances, I am of the view that the claim for the legal fees and expenses on an indemnity basis by way of special damages is appropriate.

[51] With that, I now turn to deal with the various heads of damages claimed, starting with special damages and to assess the same.

Special Damages

[52] Under the category of special damages, the plaintiffs claim four separate items as summarised in para. [12] above. The bulk of the claim under this category is a sum of RM2,748,000 comprising legal fees ("legal charges") incurred in the legal action to recover their five pieces of property including the Kg Selamat Land and the No. 59 Taman Ilmu properties which were found to have been caused to have been fraudulently transferred to the third to fifth defendants by the defendants acting in concert and facilitated by the first defendant.

Legal Charges

[53] Evidence led to support the amount paid and payable for the legal charges are contained in the witness statements in the form of affidavits of PWS1 (paras. 9, 13, 16, 17, 18 and 19) and PWS2 (paras. 4, 12, 13, 14 and 15). PWS1 and PWS2 are the witness statements of the second and first plaintiffs respectively.

[54] Further evidence was led through the witness statements marked as:

(i) PWS3 at para. 11 on the plaintiffs still owing legal fees;

(ii) PWS4 on him having to discontinue his studies and work so as to send money home to pay for the (legal) expenses incurred in this legal action; and

(iii) PWS5 which were also in the form of affidavits.

[55] PWS3, PWS4 and PWS5 were the witness statements of Wong Tiang Soon (PW3) a cousin of the second plaintiff and a former employee of the first plaintiff, Ling Boon Heng (PW4) the eldest son of the first plaintiff and the brother of the second plaintiff and Tiong Sew Choo (PW5) the sister of the late wife of the plaintiff who said that her late sister was worried about not being able to pay for the tuition fees of PW4.

[56] These witnesses were all subject to cross-examination.

[57] The documentary evidence led by the plaintiffs is helpfully tabulated and are reproduced below:

(i) Retainers

No.	Case No.	Supporting Documents	Legal Fees (RM)
1.	High Court ("HC") Suit No. 22-203-2006	Letter of agreement on legal fees dated 21.02.2006 ("LA 21.2.2006") para. 1(ii), (iii) & (v) at p. 1-2 Jilid 1 Writ of Summons dated 18.08.2006 at p. 4-5 Jilid 1	- 120,000 (2563); - 120,000 (2564); - 80,000 (No. 59) 320,000
2.	HC No. 22-203-2006	Summons in Chambers dated 05.10.2006 p. 6-8 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
3.	HC No. 22-203-2006	Summons in Chambers dated 09.01.2007 p. 9-10 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
4.	HC No. 22-203-2006 5,000	Notice of Appeal to Judge in Chambers dated 26.02.2008 at p. 11-12 Jilid 1 with cross reference to LA 21.2.2006 on legal fees para. 1 (vii) at p. 1-2 Jilid 1	

5.	HC No. 22-45-2008	Writ of Summons dated 27.02.2008 at p. 13-14 Jilid 1 Another letter of agreement on legal fees dated 08.05.2008 para. 1 at p. 20-21 Jilid 1	50,000
6.	HC No. 22-203-2006	Summons in Chambers dated 15.11.2007 p. 15-16 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
7.	HC No. 22-45-2008	Summons in Chambers dated 29.02.2008 p. 17-19 Jilid 1 with cross reference to LA 21.2.2006 para. 2 at p. 20-21 Jilid 1	5,000
8.	HC No. 22-203-2006	Summons in Chambers dated 26.08.2008 p. 28-29 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
9.	HC No. 22-203-2006	Summons in Chambers dated 30.03.2010 p. 30-32 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
10.	HC No. 22-203-2006	Summons in Chambers dated 19.05.2010 p. 33-34 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
11.	HC No. 22-203-2006	Summons in Chambers dated 19.09.2011 p. 35-37 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
12.	HC No. 22-203-2006	Summons in Chambers dated 20.10.2011 p. 38-41 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
13.	Court of Appeal ("CoA") No. A-02-428-02/2012	Letter of agreement on legal fees dated 06.02.2012 ("LA 2012") para. 2 at p. 43-44 Jilid 1 Notice of Appeal dated 10.02.2012 at p. 48-49 Jilid 1	50,000
14.	HC No. 22-203-2006	Summons in Chambers dated 09.02.2012 p. 45-47 Jilid 1 with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000

15.	Court of Appeal ("CoA") No. A-02-2975-12/2012	Notice of Appeal dated 03.12.2012 at p. 55-57 Jilid 1 Letter of agreement on legal fees dated 19.12.2012 para. 2 at p. 61-62 Jilid 1	80,000
16.	HC No. 22-203-2006	Summons in Chambers dated 04.12.2012 p. 58-60 Jilid 1 cross refer with cross reference to LA 21.2.2006 para. 1(iv) at p. 1-2 Jilid 1	5,000
17.	Court of Appeal ("CoA") No. A-02-102-01-2013	Notice of Appeal dated 11.12.2012 at p. 67-68 Jilid 1 Letter of agreement on legal fees dated 02.01.2013 para. 2 at p. 63-64 Jilid 1	80,000
18.	Court of Appeal ("CoA") No. A-02(1M)-1147-05/2013	Notice of Appeal dated 30.04.2013 at p. 71-72 Jilid 1 Letter of agreement on legal fees dated 02.05.2013 para. 2 at p. 65-66 Jilid 1	50,000
19.	CoA No. A-02-2975-12/2012	Notice of Motion dated 18.04.2013 at p. 73-77 Jilid 1 cross refer Letter of agreement para. 2 at p. 61-62 Jilid 1	10,000
20.	HC No. 22-203-2006	Notice of Application (*Ex parte*) dated 04.07.2013 at p. 78-79 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
21.	HC No. 22-203-2006	Notice of Application (*Ex parte*) dated 11.07.2013 at p. 80-81 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
22.	HC No. 22-203-2006	Notice of Application (*Ex-parte*) dated 23.07.2013 at p. 82-84 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
23.	CoA No. A-02(IM)-1147-05/2013	Notice of Motion dated 17.09.2013 at p. 85-86 Jilid 1 cross refer Letter of agreement on legal fees at p. 63-64 Jilid 1	10,000
24.	CoA No. A-02-2975-12/2012	Notice of Motion dated 13.08.2013 at p. 87-89 Jilid 1 cross refer Letter of agreement at p. 61-62 Jilid 1	10,000

25.	HC No. 22-203-2006	Notice of Motion dated 23.08.2013 at p. 90-91 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
26.	HC No. 22-203-2006	Notice of Motion dated 23.08.2013 at p. 90-91 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
27.	Federal Court ("FC") No. 08-273-05/2014	Notice of Motion dated 28.05.2014 at p. 94-95 Jilid 1 cross refer Letter of agreement on legal fees p. 96-97 Jilid 1	80,000
28.	FC. No. 08-156-04/2015	Notice of Motion dated 10.04.2015 at p. 114-116 Jilid 1 cross refer Letter of agreement on legal fees p. 109 Jilid 1	80,000
29.	FC No. 08-155-04/2015	Notice of Motion dated 10.04.2015 at p. 112-113 Jilid 1 cross refer Letter of agreement on legal fees p. 110 Jilid 1	80,000
30.	FC No. 08-156-04/2015	Notice of Motion dated 10.04.2015 at p. 112-113 Jilid 1 cross refer Letter of agreement on legal fees p. 111 Jilid 1	50,000
31.	FC No. A-02-2975-12/2012	Notice of Appeal dated 15.04.2016 at p. 120-122 Jilid 1 cross refer Letter of agreement on legal fees p. 117 Jilid 1	150,000
32.	FC No. A-02(IM)-1147-05/2013	Notice of Appeal dated 15.04.2016 at p. 120-122 Jilid 1 cross refer Letter of agreement on legal fees p. 118 Jilid 1	100,000
33.	FC No. A-02-102-01/2013	Notice of Appeal dated 15.04.2016 at p. 123-125 Jilid 1 cross refer Letter of agreement on legal fees p. 119 Jilid 1	150,000
34.	FC No. 02(f)-24-04/2016(A)	Notice of Motion dated 13.07.2016 at p. 126-128 Jilid 1 cross refer Letter of agreement on legal fees para 2.3 p. 137 Jilid 1	10,000

35.	FC No. 02(f)-24-04/ 2016(A)	Notice of Motion dated 28.02.2018 at p. 133-135 Jilid 1 cross refer Letter of agreement on legal fees para 2.1 p.137 Jilid 1	100,000
36.	HC No. 22-203-2006	Notice of Motion dated 16.04.2018 at p. 138-142 Jilid 1 cross refer Letter of agreement on legal fees para 2.1 p. 136 Jilid 1	50,000
37.	HC No. 22-203-2006	Notice of Motion dated 31.07.2018 at p. 143-145 Jilid 1 with cross reference to LA 21.2.2006 para. 1(vii) at p. 1-2 Jilid 1	5,000
38.	FC No. 08(R)-8-10/2018(W)	Notice of Motion dated 23.10.2018 at p. 146-153 Jilid 1 cross refer Letter of agreement on legal fees para 3.1 at p. 159 Jilid 1	100,000
39.	HC No. 22-203-2006	Notice of Motion dated 25.10.2018 at p. 154-158 Jilid 1 with cross reference to LA 21.2.2006 para 1(vii) at p. 1-2 Jilid 1	5,000
40.	FC No. 08(RS)-15-11/2018(W)	Notice of Motion dated 08.11.2018 at p. 160-167 Jilid 1 cross refer Letter of agreement on legal fees para 3.1 at p. 174 Jilid 1	100,000
41.	FC No. 08(R)-8-10/2018(W)	Notice of Motion dated 19.11.2018 at p. 168-173 Jilid 1 cross refer Letter of agreement on legal fees para 3.3 at p. 159 Jilid 1	10,000
42.	CoA No. A-02(IM)-2555-12/2018	Notice of Appeal dated 07.12.2018 at p. 176-177 Jilid 1 cross refer Letter of agreement on legal fees para 3.1 at p. 175 Jilid 1	50,000
43.	FC No. 08(i)-92-03/2019(A)	Notice of Motion dated 19.03.2019 at p. 181-182 Jilid 1 cross refer Letter of agreement on legal fees para 3.1 at p. 178 Jilid 1	80,000
44.	FC No. 02(f)-24-04/2016(A)	Notice of Motion (*Ex-parte*) dated 08.05.2019 at p. 183-185 Jilid 1 cross refer Letter of agreement on legal fees para 5.1 at p. 179-180 Jilid 1	300,000

45.	FC No. A-02(IM)-2555-12/2018	Notice of Appeal dated 31.10.2019 at p. 205-207 Jilid 1 cross refer Letter of agreement on legal fees para 3.1 at p. 204 Jilid 1	100,000
		TOTAL	2,345,000 (there was an admitted error in the calculation of total sum in p. 8 PWS1 by an additional RM100,000 leading to (RM2,425,000)

[58] Besides the retainers in the table above, further legal fees in the form of refreshers were charged.

[59] A retainer means the fees chargeable when a law firm is retained to undertake a particular piece of work and a refresher is the fee chargeable when the advocate and solicitor of the law firm retained has to refresh his memory so as to prepare for the legal assignment normally a hearing in court.

[60] The refreshers that the plaintiffs were charged are tabulated with the contents obtained from the documentary evidence led. This table prepared by learned counsel for the plaintiffs is set out hereunder:

No.	Case No.	Supporting Documents	Legal Fees (RM)
1.	HC No. 22-203-2006 attended by Edmund Lim on 10.01.2007 before Pn. Sharifah the learned Senior Assistant Registrar ("SAR")	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
2.	HC No. 22-203-2006 attended by Edmund Lim on 19.02.2008 before Pn. Suhaily SAR	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000

3.	HC No. 22-203-2006 attended by Edmund Lim on 24.03.2008 before Y.A. Wan Afrah Binti Wan Ibrahim	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
4.	HC No. 22-203-2006 attended by Edmund Lim on 14.07.2008 before Y.A. VT Singham	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
5.	HC No. 22-203-2006 attended by Edmund Lim on 10.12.2009 before Y.A. Wan Afrah Binti Wan Ibrahim	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
6.	HC No. 22-203-2006 attended by Edmund Lim on 10.12.2009 before Y.A. Zainal Adzam Bin Abd Ghani	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
7.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang on 01.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
8.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 02.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
9.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 15.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000

10.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 16.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
11.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 22.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
12.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang on 27.02.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
13.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 16.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
14.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 19.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
15.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 23.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
16.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 26.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

17.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 26.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
18.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 27.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
19.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 27.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
20.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 29.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
21.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 30.03.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
22.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 18.04.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

23.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 10.05.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
24.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 11.05.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
25.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 15.05.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
26.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 24.05.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
27.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 13.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
28.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 14.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

29.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 20.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
30.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 21.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
31.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 22.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
32.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang on 27.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
33.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang on 28.06.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
34.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 19.07.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
35.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 20.07.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

36.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 23.07.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
37.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 25.07.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
38.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 27.07.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
39.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 08.08.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
40.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 09.08.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
41.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 10.08.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
42.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 18.09.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000

43.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 19.09.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
44.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chew King, Hong Chong Hang & Edmund Lim on 28.09.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	9,000
45.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 03.10.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter ofagreement para. 2(ii) at p. 1-2 Jilid 1	4,000
46.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 04.10.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
47.	HC No. 22-203-2006 & 22-45-08 attended by & Hong Chong Hang Edmund Lim on 05.10.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
48.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 08.10.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
49.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 11.10.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

50.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 22.11.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
51.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 28.11.2012 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
52.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 04.02.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
53.	COA No. A-02-2975-12/2012 attended by Hong Chong Hang & Edmund Lim on 08.05.2013 before Y.A. Abdul Wahab Bin Patail, Y.A. Mohamad Ariff Bin Md Yusof, Y.A. Tengku Maimun Bt Tuan Mat	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62 Jilid 1	4,000
54.	COA No. A-02-2975-12/2012 attended by Edmund Lim on 28.05.2013 before Pn. Sazlina TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62 Jilid 1	2,000
55.	COA No. A-02-428-02/2012 attended by Edmund Lim on 11.06.2013 before Tn. Saiful Bahari TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 43-44 Jilid 1	2,000
56.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 08.07.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000

57.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 10.07.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
58.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 20.08.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
59.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 26.08.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
60.	COA No. A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 17.09.2013 before Y.A. Mohamad Apandi Bin Ali, Y.A. Linton Albert, Y.A. Lim Yee Lan	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para (ii) at p. 61-62 Jilid 1	4,000
61.	COA No. A-02(IM)-1147-05/2013 attended by Edmund Lim on 20.09.2013 before Pn. Nurul Izwan bt Ahmad Zubir TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para (ii) at p. 63-64 Jilid 1	2,000
62.	COA No. A-02-2975-12/2012 attended by Edmund Lim on 24.09.2013 before Pn. Fadzilatul Isma Bt. Ahmad Refugah TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62 Jilid 1	2,000
63.	COA No. A-02(IM)-1147-05/2013 attended by Edmund Lim on 02.10.2013 before Y.A.A. Md Raus Bin Sharif	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. (ii) at p. 63-64 Jilid 1	2,000

64.	COA No. A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 14.10.2013 before Y.A. Alizatul Khair Bt Osman, Y.A. Ananthan Kasinather, Y.A. Varghese George Varughese	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. (ii) at p. 63-64 Jilid 1	4,000
65.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 21.10.2013 before Y.A. Dr. Hj. Hassan Bin Ab Rahman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
66.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 25.10.2013 before Pn. Najwa Che Mat TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
67.	C OA No. A-02-2975-12/2012 attended by Hong Chong Hang & Edmund Lim on 19.11.2013 before Y.A. Mohd Hishamudin Bin Mohd Yunus, Y.A. Lim Yee Lan, Y.A. Mohd Zawawi Bin Salleh	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62 Jilid 1	4,000
68.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 10.01.2014 before Pn. Najwa Che Mat TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
69.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 23.01.2014 before Pn. Najwa Che Mat TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000

70.	COA No. A-02-428-02/2012 attended by Edmund Lim on 27.01.2014 before Y.A.A. Md Raus bin Sharif	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 43 Jilid 1	2,000
71.	COA No. A-02-2975-12/2012, A-02-102-01/2013 & A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 17.02.2013 before Y.A. Mohd Hishamudin Bin Mohd Yunus, Y.A. Lim Yee Lan, Y.A. Aziah Binti Ali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62, 63-64, 65-66 Jilid 1	4,000
72.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 03.03.2014 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	4,000
73.	COA No. A-02-428-02/2012 attended by Edmund Lim on 29.04.2014 before Y.A. Tengku Maimun Binti Tuan Mat, Y.A. Aziah binti Ali, Y.A. Lim Yee Lan	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 43 Jilid 1	2,000
74.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 23.06.2014 before Pn. Siti Hafiza bt. Jaafar/Tn. Aznin TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
75.	COA No. A-02-2975-12/2012, A-02-102-01 /2013 & A-02(IM)-1147 -05/2013 attended by Edmund Lim on 02.07.2014 before Pn. Emelia Kaswati bt. Mohamad Khalid TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62, 63-64, 65-66 Jilid 1	2,000

76.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 07.07.2014 before Pn. Siti Hafiza bt. Jaafar	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
77.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 07.07.2014 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
78.	FC No. 08(f)-273-05/ 2014(A) attended by Edmund Lim on 09.09.2014 before Pn. Jalidah bt. Hamid TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 96-97 Jilid 1	2,000
79.	COA No. A-02-2975-12/2012, A-02-102-01/2013 & A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 23.09.2014 before Y.A Lim Yee Lan, Y.A. Abang Iskandar bin Abang Hashim, Y.A. Vernon Ong Lam Kiat	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62, 63-64, 65-66 Jilid 1	4,000
80.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 25.09.2014 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
81.	FC No. 08-273-05/2014 attended by Edmund Lim on 05.11.2014 before Y.A.A. Zulkefli bin Makimuddin, Y.A.A. Richard Malanjum, Y.A. Jeffrey Tan Kok Hwa Y.A. Azahar bin Mohamed, Y.A. Abu Samah bin Nordin	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 96-97 Jilid 1	2,000

82.	COA No. A-02-2975-12/2012, A-02-102-01/2013 & A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 23.09.2014 before Y.A Lim Yee Lan, Y.A. Abang Iskandar bin Abang Hashim, Y.A. Vernon Ong Lam Kiat	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62, 63-64, 65-66 Jilid 1	4,000
83.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 26.11.2014 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
84.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 13.01.2015 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
85.	COA No. A-02-2975-12/2012, A-02-102-01/2013 & A-02(IM)-1147-05/2013 attended by Hong Chong Hang & Edmund Lim on 13.03.2015 before Y.A Lim Yee Lan, Y.A. Abang Iskandar bin Abang Hashim, Y.A. Vernon Ong Lam Kiat	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 61-62, 63-64, 65-66 Jilid 1	4,000
86.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 23.03.2015 before Y.A. Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000

87.	FC No. A-08-155-04/2015 & A-08-154-04/2015 attended by Edmund Lim on 07.10.2015 before Pn. Hasbi bt Hassan TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 109 & 111 Jilid 1	2,000
88.	FC No. A-08-155-04/2015 & A-08-154-04/2015 attended by Hong Chong Hang & Edmund Lim on 12.01.2016 before Pn. Nor Aziati bt. Jaafar TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 109 & 111 Jilid 1	4,000
89.	FC No. A-08-155-04/2015 & A-08-154-04/2015 attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang & Edmund Lim on 28.03.2016 before Y.A.A. Arifin bin Zakaria, Y.A. David Wong Dak Wah Y.A. Abu Samah bin Nordin	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 109 & 111 Jilid 1	4,000
90.	FC No. A-08-155-04/2015 & A-08-154-04/2015 attended by Hong Chong Hang & Edmund Lim on 03.06.2016 before Pn. Nor Kamilah bt. Aziz TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 109 & 111 Jilid 1	4,000
91.	FC No. 02(f)-23-04/2016 & 02(f)-24-04/2016 attended by Edmund Lim on 13.06.2016 before Pn. Nurul Mardiah bt. Mohammad Redza TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	2,000
92.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2016 attended by Edmund Lim on	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of	2,000

	13.06.2016 before Pn. Nurul Mardiah bt. Mohammad Redza TP	agreement p. 119 & 117 & 118 Jilid 1	
93.	FC No. 02(f)-24-04/ 2016(A) & 02(f)-23-04 /2016 attended by Hong Chong Hang & Edmund Lim on 14.07.2016 before Pn. Nurul Mardiah bt. Mohammad Redza TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000
94.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2016 attended by Wong Chun Keat, Hong Chong Hang & Edmund Lim on 10.08.2016 before Y.A.A. Raus Sharif, Y.A.A. Richard Malanjum, Y.A. Jeffrey Tan Kok Hwa, Y.A. Aziah bt. Ali, Y.A. Suriyadi Bin Halim Omar	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000
95.	FC No. 02(f)-24-04/ 2016(A) & 02(f)-23 -04/2015(A) attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang & Edmund Lim on 23.11.2016 before Y.A.A. Raus Sharif, Y.A.A. Richard Malanjum, Y.A. Abu Samah Bin Nordin,Y.A. Ramly Bin Hj Ali,Y.A. Zaharah binti Ibrahim	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000
96.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2015(A) attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000

	& Edmund Lim on 20.06.2017 before Y.A.A. Raus Sharif, Y.A.A. Richard Malanjum, Y.A. Abu Samah Bin Nordin, Y.A. Ramly Bin Hj Ali, Y.A. Zaharah binti Ibrahim		
97.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2015(A) attended by Hong Chong Hang & Edmund Lim on 08.08.2017 before Pn. Nor Kamilah bt. Aziz TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000
98.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2015(A) attended by Hong Chong Hang & Edmund Lim on 28.09.2017 before Pn. Nor Kamilah bt. Aziz TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 119 & 117 & 118 Jilid 1	4,000
99.	FC No. 02(f)-24-04/2016(A) & 02(f)-23-04/2015(A) attended by Edmund Lim on 17.04.2018 before Pn. Shahrin TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 137 Jilid 1	2,000
100.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 10.07.2018 before Pn. Noor Azreen Liana SAR	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. p. 136 Jilid 1	2,000
101.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 08.08.2018 before Pn. Noor Azreen Liana SAR	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000

102	FC No. 02(f)-24-04/2016(A) attended by Wong Chong Wah, Goh Lee Ding, Hong Chong Hang & Edmund Lim on 15.08.2018 before Y.A.A. Ahmad bin Haji Maarop, Y.A.A. David Wong Dak Wah, Y.A. Azahar bin Mohamed, Y.A. Aziah binti Ali, Y.A. Alizatul Khair binti Osman	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2.2 at p. 137 Jilid 1	4,000
103	FC No. 02(f)-24-04/2016(A) attended by Edmund Lim on 06.09.2018 before Pn. Sabreena bt Bakar @ Bahari	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2.2 at p. 137 Jilid 1	2,000
104.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang on 25.09.2018 before Pn. Noor Azreen Liana	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
105.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 26.10.2018 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
106.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 26.11.2018 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
107.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 06.11.2018 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000

108.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 15.01.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
109.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 11.02.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
110	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 25.02.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
111.	COA No. A-02(IM)-2555 -12/2018 attended by Hong Chong Hang & Edmund Lim on 07.03.2019 before Y.A. Zaleha bt Yusof, Y.A. Hanipah bt Farikullah, Y.A. Kamaludin bin Md Said	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 175 Jilid 1	4,000
112.	FC No. 08(R)-8-10/2018(W) & 08(RS)-15-11/2018(W) attended by Wong Chong Wah, Wong Chun Keat, Goh Lee Ding, Hong Chong Hang & Edmund Lim on 14.05.2019 before Y.A.A. Tengku Maimun Binti Tuan Mat, Y.A. Mohd Zawawi Bin Salleh, Y.A. Idrus Bin Harun, Y.A. Nallini Pathmanathan, Y.A. Badariah Binti Sahamid	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 3.2 at p. 159 & 174 Jilid 1	4,000
113.	FC No. 08(R)-8-10 /2018(W) & 08(RS)-15-11 /2018(W) attended by Wong Chong Wah, Goh Lee Ding, Hong Chong Hang	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 3.2 at p. 159 & 174 Jilid 1	4,000

	& Edmund Lim on 27.05.2019 before Y.A. Rohana Binti Yusuf, Y.A. Mohd Zawawi Bin Salleh, Y.A. Idrus Bin Harun, Y.A. Nallini Pathmanathan, Y.A. Badariah Binti Sahamid		
114.	FC No. 02(f)-24-04/2016(A) attended by Hong Chong Hang & Edmund Lim on 27.05.2019 before Y.A. Rohana Binti Yusuf, Y.A. Mohd Zawawi Bin Salleh, Y.A. Idrus Bin Harun, Y.A. Nallini Pathmanathan, Y.A. Badariah Binti Sahamid	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2.2 at p. 179-180 Jilid 1	4,000
115.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 18.06.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
116.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 09.07.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
117.	FC No. 02(f)-24-04/2016(A) attended by Edmund Lim on 12.07.2019 before Pn. Norhafizah bt Zainal Abidin TP	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2.2 at p. 179-180 Jilid 1	2,000
118.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 01.08.2019 before Y.A.Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
119.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216	4,000

	& Edmund Lim on 26.08.2019 before Y.A. Radzi Bin Harun	Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	
120	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 11.09.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
121.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 01.10.2019 before Y.A.Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
122.	FC No. 08(i)-92-03/2019(A) attended by Hong Chong Hang & Edmund Lim on 29.10.2019 before Y.A.A. Tengku Maimun Binti Tuan Mah, Y.A. Rohana Binti Yusuf, Y.A. Mohd Zawawi Bin Salleh	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 178 Jilid 1	4,000
123	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 13.11.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
124.	HC No. 22-203-2006 & 22-45-08 attended by Hong Chong Hang & Edmund Lim on 05.12.2019 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	4,000
125.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 21.01.2020 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 136 Jilid 1	2,000
126.	FC No. 02(f)-24-04/2016(A) attended by Hong Chong Hang & Edmund Lim on 14.07.2020 before	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 179-180 Jilid 1	4,000

	Y.A. Abdul Rahman Bin Sebli, Y.A. Zabariah Binti Mohd Yusof, Y.A. Hasnah Binti Mohd Hashim		
127.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 23.07.2020 before Pn. Noor Hafiza Binti Ishak SAR	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
128.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 02.09.2020 before Y.A. Radzi Bin Harun	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
129.	HC No. 22-203-2006 & 22-45-08 attended by Edmund Lim on 26.10.2020 before Y.A. Su Tiang Joo	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
130.	HC No. 22-203-2006 & 22-45-08 attended by Koay Jing Qian on 05.01.2021 before Y.A. Su Tiang Joo	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement para. 2(ii) at p. 1-2 Jilid 1	2,000
131.	FC No. 02(f)-24-04/2016(A) attended by Hong Chong Hang & Edmund Lim on 04.01.2021 before Y.A. Abdul Rahman Bin Sebli, Y.A. Zabariah Binti Mohd Yusof, Y.A. Hasnah Binti Mohd Hashim	M/s Hong Chew King & Co. Court attendance list dated 02.11.2020 at p. 208-216 Jilid 1 cross refer Letter of agreement p. 179-180 Jilid 1 TOTAL	4,000 403,000 (with there being an admitted error in the addition said to be RM399,000 in PWS1 p. 20)

[61] The defendants did not dispute any of the court attendances particularised in the above list during the entire action and rightly so, as the court attendances in the table above, are part of public records which are easily verifiable. More so, when the dates, suit numbers and even the coram for each of the attendances were clearly particularised.

Excessive And Unforeseeable Legal Charges

[62] Besides, the pleading point which had been dealt with earlier, the other challenge by the defendants was that the quantum of these legal charges were excessive and unforeseeable and there is no evidence that the same have [all] been paid.

[63] This challenge to my mind is without merit. Such is the perils of litigation. When the plaintiffs initiated the suit on 18 August 2006, they submit to due process which allows a party aggrieved by any decision at first instance to appeal, commonly referred to as – one strike two appeals. The parties took their rights of appeal seriously as can be seen from the numerous appeals filed and, in fact, they initiated and pursued three review applications in the Federal Court.

[64] In *Yap Soo Ping & Anor v. Kee Wah Soong* [2018] 1 LNS 1020, Her Ladyship, Noorin Badaruddin J held, *inter alia*, as follows:

> [38] This Court is also satisfied that apart from having to keep and maintain the company after the shares were transferred to him, the Defendant had to engage lawyers to defend him. Obviously, he has to have meetings and travel to attend such meetings to prepare for his case. *This Court accepts the Defendant's argument that none of that would have happened and none of the expenses would have incurred by him if not for the fraudulent misrepresentation committed by the 2nd plaintiff*. There is no necessity to require the Defendant to produce documents as the Defendant is not travelling officially.
>
> [39] ... *It is obvious that having to defend the suit, to pursue the counterclaim, to prove the fraudulent misrepresentation of the 2nd plaintiff and in bringing witnesses for the trial, the Defendant had incurred legal fees and expenses. Therefore, it is of the considered view that such expenses are reasonable and recoverable*.
>
> (emphasis added)

[65] The legal charges were premised on agreements entered on various dates with the main one on 21 February 2006 (R41 pp. 1 to 3) where the fee structure was premised upon a fixed retainer for the recovery of each of the five pieces of properties and refreshers for court attendances with a different rate to apply for a junior and a senior counsel.

[66] This court is of the view that having the benefit of hindsight to mount a challenge on excessive and unforeseeable legal charges after 15 years of litigation when the defendants have been involved in the same including the

appeals and three review applications at the Federal Court is wholly without merit. By the same token, if they have prescience, the defendants could have saved all the parties including themselves the costs and the huge amount time from undertaking the transactions which were found by the High Court after a trial over 36 days to be fraudulent, null and void. They could also have spared themselves the appeal to the Court of Appeal and for good measure, not resist the plaintiffs' appeal to Federal Court. Added to that, they could also not have applied three times to review Federal Court decision where they were found guilty of contempt of court before coming back to the High Court and expending another five days in trial for the assessment of damages before closing submissions.

[67] Out of the total sum of RM2,748,000 which comprise retainers and refreshers, the plaintiffs concede that a sum of RM140,000 being the costs received by them from various orders, plus a sum of RM4,000 where there was duplicity in the charging of a refresher for the court attendance on 26 March 2012, ought to be deducted.

[68] Even if this concession was not given the court would have made the deductions, see *Abdul Razak Datuk Abu Samah v. Shah Alam Properties Sdn Bhd & Another Appeal* [1999] 3 CLJ 231; [1999] 2 MLJ 500 CA and *Sonic Finance Inc & Anor v. Halim Mohammad & Ors* [2019] 1 LNS 651; [2019] MLJU 1887 where His Lordship, Wong Kian Kheong after finding that the plaintiff had committed the tort of abuse of court process against the first defendant ordered assessment of damages against the plaintiff and said:

> [34] Cik Marina Nasution, the 1st Defendant's learned counsel, has contended that the plaintiffs are liable to pay for all of the 1st Defendant's legal fees and disbursements incurred for the 3 Actions. *I accept this submission with a qualification - the 1st Defendant has been previously awarded costs against the plaintiffs (Costs) and the Costs can be recovered by the 1st Defendant from the plaintiffs. Accordingly, the 1st Defendant is entitled to claim for all legal fees and disbursements incurred in the 3 Actions less the Costs (Deduction)* – please see Ranjeet Singh Sidhu, at [64(b)(i)]. *If the Deduction is not given in this Assessment, this will enrich the 1st Defendant unjustly because the 1st Defendant will have a "double recovery" in respect of the Costs (by way of the previous order granting Costs and through this Assessment).*
>
> (emphasis added)

[69] This meant that after deducting RM144,000 the total amount claimed under legal charges is RM2,604,000.

Whether Legal Fees Incurred

[70] The defendants submitted that the plaintiffs must prove that expenditure of the legal fees was incurred and paid before they can be awarded the damages claimed.

[71] Reliance was placed by the defendants on the following High Court authorities: A

(i) *Minty Holdings Sdn Bhd v. JB Properties Sdn Bhd; SK Brothers Realty (Third Party)* [1998] 1 LNS 214 where Kamalanathan Ratnam J held that:

> This claim has been quantified and ascertained as amounting to RM41,801.90. I have read the judgment of my learned sister Zaleha Zahari J dated 16.2.96. Having allowed the appeal from the learned SAR she allowed summary judgment of the plaintiff's claim and ordered that general damages ought to be assessed with interest at 8%. B
>
> There is a clear distinction between general and special damages. As I said in my book "*Nathan on Negligence*" 1998 Ed at page 342: C
>
> > *"Special damages belong to that category of damages that can be calculated into dollars and cents at the date of the trial."*
>
> In *R.J. McGuinness v. Ahmad Zaini* [1980] 2 MLJ 304 the Court held that items of special damages must be specifically pleaded and if omitted, then the plaintiff must amend to include the items; otherwise no award would be made. In this case since the legal fees were quantifiable the order of the learned Judge should have included an order for special damages too. Since the order related only to general damages, the plaintiff had no right to make a claim for the ascertained legal fees which are in fact special damages. D E
>
> In any case since I have already held that the plaintiff has shown no nexus between the filing of the caveat and the delay in settlement by the purchaser, this claim for legal fees too must perforce be rejected. F

(ii) *Khairul Sham Ahmad & Anor v. Yesudass Michaelsamy* [2005] 2 CLJ 195; [2005] 2 MLJ 679 [TAB 9, DBOA] where Faiza Thamby Chik J held that:

> *I think special damages means 'out of pocket expenses' which consists of money incurred or paid by the plaintiff, which amounts to a 'loss' to the plaintiff" ... that it is a universal rule that the plaintiff cannot recover more than he has lost.* G
>
> (emphasis added)

(iii) *Lau Yang Kim v. Rescom Australia Sdn Bhd & Anor* [2020] 4 CLJ 130 [TAB 11, DBOA] where Amarjeet Singh Serjit Singh JC held that: H

> [26] **In my view, legal fees fall within the meaning of special damages**. I reached this conclusion after applying the test stated in *Ong Ah Long* (*supra*). I find that legal fees are ascertained expenses and therefore particularity is necessary to warn the defendant of what is being claimed or the claims that he will be confronted with at the trial. I

A

> [27] However, in the present case the legal fees could not be pleaded and proved at the trial because the legal fees have yet to crystallise. **To be entitled to an award of special damages the items constituting special damages must have been expended before the trial begins**. In the present case, the dates of the 12 invoices that make up the legal fees ranged from 15 June 2015 until 13 August 2018 and the payment in respect of the twelfth invoice was only made on 15 October 2018 after the trial of this action was concluded. Therefore, the legal fees of a concluded action cannot be claimed in the same action as special damages.
>
> (emphasis added)

C

(iv) *Sitti Rajumah & Anor v. Mohd Rafiuddin Elmin* [1996] 4 CLJ 274 where Tuan Ian HC Chin J held that legal fees are not claimable because the plaintiff is not entitled to claim all costs incurred unless an order for costs on indemnity basis was awarded and His Lordship said:

D

> ... Apart from it not being pleaded which prevents it from being raised, it also cannot constitute damages be it special or general as to be recoverable as such item is governed by the rules of the Court governing the award of costs and to award legal fees as damages would make nonsense of the said rules since to allow the item as damage may result in a litigant getting costs through another view though the Court may not exercise its discretion to award costs to a successful litigant (*McGregor on Damages*, 15 edn., para. 662). **It must also be borne in mind that a litigant, unless cost was awarded to him on an indemnity basis**, cannot recoup in full what **he has to pay** his own lawyers but only the costs taxed on a party to party basis. For the respondent to claim from the appellants whatever legal fees he had paid to his lawyer would mean claiming for costs on an indemnity basis which matter should properly come under the claim for costs of the action which the respondent had asked for.
>
> (emphasis added)

G

(v) *Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd* [2012] 9 CLJ 352; [2012] MLJU 1070 where Hamid Sultan Abu Backer J (then) held that:

H

> [10] As a general rule, court is obliged to order party to party costs on a standard basis and is given the discretion to order the same on indemnity basis (see O. 59 rule 16(2) of the CR 2012). A party to party costs on indemnity basis may be ordered where there has been scandalous conduct and is meant to be punitive in nature (see *EMI Records v. Wallace* [1982] 2 All E.R. 980). Order 59 rule 16(4) of the RC 2012 sets out the manner costs on indemnity basis should be assessed.

I

> ... [11] Solicitor-client costs, in essence, are based on indemnity basis. The solicitor-client costs are not based on what costs or fees the solicitor has agreed with the client. **If [a] solicitor has agreed**

> **with the client a certain fees (actual costs), they are contractual** and have nothing to do with taxation on solicitor-client basis. Taxing registrar must note this distinction. (emphasis added)

[72] Learned counsel for the plaintiffs pointed out that in *Yii Ping Hiong & Anor v. Tseng Choon Chin & Ors* [2009] 1 LNS 756, Linton Albert J upheld the award of damages awarded for the legal fees incurred by the respondents in their litigation and in particular, in resisting execution proceedings brought by the appellants to maintain and prevent the removal of the private caveat lodged by the appellants over their property and His Lordship construed the case of *Siti Rajunah* (*supra*) to have held that if costs is awarded to a party on an indemnity basis, the party will be so entitled to recoup in full what he **has to pay** his own lawyers and I would add, even though not as yet paid. (emphasis added)

[73] See also *Lim Tee Hin v. Ledchumanan Nagappan* [2004] 3 CLJ 285 where Low Hop Bing J (later JCA) upheld the learned Registrar's award of legal fees incurred by the plaintiff when assessing damages against the defendant for lodging a wrongful caveat.

[74] In *Tan Thiam Hock v. Corrugated Offset Packaging (M) Sdn Bhd & Anor* [2011] 1 LNS 592, Lau Bee Lan J (now JCA) found the private caveat lodged by the plaintiff to be unlawful and in addition to an award of RM40,000 as costs, Her Ladyship allowed, *inter alia*, costs to the first defendant for the removal of the private caveat to be taxed on a solicitor client basis.

[75] In *Sigma Glove Industries Sdn Bhd & Ors v. Ong Chin Kok & Anor* [2019] 1 LNS 1370, Lim Chong Fong J allowed the second defendant's application to set aside an *Anton Piller* order. In addition to an award of RM50,000 as costs, the court ordered, *inter alia*, that the plaintiffs pay the second defendant damages to be assessed. Upon assessment, His Lordship Lim Chong Fong J allowed legal fees and disbursements in favour of the second defendant. The relevant portions of His Lordship's judgment at p. 24 is reproduced below:

> [33] The cases cited by the parties mostly dealt with the legal fees and disbursements relating to the inquiry of damages which is akin to the Assessment itself. Notwithstanding that there is no case authority in point tendered either by the Second Defendant or the plaintiffs, *I am nonetheless of the view that the legal fees and disbursements expended by the Second Defendant in instructing solicitors, obtaining advise and attending to the plaintiffs solicitors and the supervising solicitors are claimable in principle because there is undoubtedly direct causal connection between the enforcement of the APO and the Second Defendant having to obtain legal services to respond to it on that day*. This is in line with my opinion and the principle of restitution *in integrum* as discussed in *Solid Gold Publishers Sdn Bhd v. Chan Wee Ho & Ors* (*supra*).
>
> (emphasis added)

[76] Based on the authorities above, an order for damages to be assessed is wider than an order for costs. Clearly, the courts have the discretion to allow legal fees incurred by an aggrieved party, in addition to the costs awarded.

[77] Recently, the Court of Appeal in *MD Biomedical Engineering (M) Sdn Bhd v. Goh Yong Khai* [2021] 6 CLJ 30 [Tab 12 PBA] held that legal fees and disbursement does not include costs of the action awarded and may be recoverable upon the assessment of damages. His Lordship, Lee Heng Cheong JCA held:

> [26] We are of the considered opinion that the **costs of RM5,000 awarded** by the High Court when the plaintiff's application for removal of caveat was allowed by the court on 12 March 2018, **is only in respect of the legal costs of that application and does not include the plaintiff's claim for legal fees and disbursements under this originating summons for assessment of damages**.
>
> (emphasis added)

[78] The above authorities have made it clear that legal fees are a *specie* of special damages which are claimable over and on top of costs.

[79] Further, this court accepts the submissions of the plaintiffs that in an assessment of damages for fraud, the measure is that laid down in *Doyle v. Olby Ironmonger* (*supra*) that all losses are claimable on the basis of full indemnity. There was fraud found against the defendants after trial by the High Court leading to the said judgment and this judgment was restored by the Federal Court.

[80] Therefore, the plaintiffs are entitled to the legal fees and expenses on a full indemnity basis.

[81] It follows, that the authority of *Sitti Rajumah & Anor v. Mohd Rafiuddin Elmin* (*supra*) which was relied upon by the defendants themselves, in fact, and in law supports the plaintiffs seeking an indemnity.

[82] The authority of *Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd* (*supra*) cited by the defendants further supports the plaintiffs as it is indisputable that based upon the agreements set out in the tables on retainers and refreshers above, the plaintiffs have agreed with their solicitors on the fee structure and how the legal fees are chargeable and these agreements taken collectively, to use the words of His Lordship, Hamid Sultan Abu Backer J (then) would be actual costs.

[83] With respect, this court is in agreement with the principle laid down in *Khairul Sham Ahmad v. Yesudass Michaelsamy* (*supra*) that special damages consist of monetary expenses incurred or paid. That His Lordship, Faiza Thamby Chik J in *Khairul Sham* used the disjunctive "or" would mean that incurred or paid are mutually exclusive possibilities *ie*, it could be either incurred or paid and they are not to mean the same thing. I discuss with greater detail below.

[84] On the facts of this case, whether I want to apply the actual costs formula laid down in *Alex Ting Kuang Kuo* (*supra*) or the full indemnity principal formula laid down in *Doyle v. Olby (Ironmonger)* (*supra*), in my

opinion, the result would be the same. In this case, with the letters of agreements setting out the agreed retainers, the agreed refreshers and the evidence led to support the same, this court has no hesitation to accept the rates contained therein.

[85] For the sake of completeness, even if this court were to apply the formula set out in O. 59 r. 8, in my view the rates of legal fees set in the several letters of agreements for retainer and refreshers are fair and reasonable.

Legal Fees Agreed Upon But Not Paid Before Trial

[86] The issue that now arises for consideration is whether legal charges which have been agreed to be paid, but have yet to be paid, is considered as legal fees incurred, and recoverable by way of special damages.

[87] During cross-examination, it was clear that the full amount of the legal charges has not been paid by the plaintiffs. The plaintiffs admitted that only a sum of RM60,000 has been paid (R41 receipts at pp. 3 and 51 Jilid 1).

[88] This court accepts that although the legal charges have not been paid in full, they have been incurred pursuant to the various agreements (see the above tables on retainers and refreshers) entered into between the plaintiffs and their solicitors *ie*, they are actual costs, see *Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd* (*supra*) and that the defendants are liable to indemnify the plaintiffs for the same.

[89] As a matter of fundamental principle, an advocate and solicitor can lawfully be retained to act for a client with his fees to be paid at a later point in time even after the case has been concluded. There is no law to prevent an advocate and solicitor who is so kind as to agree for his fees to be paid only when the client is able to do so. It would be tragic if there is such a law, as that would mean that, many a right would be more illusory than real like in this case when an ice-cream seller takes on the might of a money lender.

[90] In the UK, it was held that there was nothing wrong for a solicitor to conduct an action on credit, see *Singh And Another v. Observer Ltd* [1989] 3 All ER 777.

[91] In *Lua & Mansor v. Tan Ah Kim* [2017] 2 CLJ 175, which is a case on matrimonial proceedings, the legal fees agreed upon exclusive of disbursements for filings, transportation, etc. was a sum of RM5,000 for the application for ancillary relief, another RM20,000 if the court granted the order plus 1.5% of the portion of the value of property or payments ordered. The Court of Appeal speaking through Her Ladyship, Rohana Yusuf JCA held:

> [20] It is also to be noted that the pre-agreed costs by the parties in this case are known as success fees, and not contingency fees because the agreed 15% fees are not contingent upon the defendant winning the case

A but it were additional fees agreed, in addition to the RM20,000 basic fees. This position taken by the plaintiff is in accord with the finding of the disciplinary committee under the LPA. The High Court in *Chai Chee Chin & Ors lwn. Tetuan Zahari Ong & Co* [2006] 8 CLJ 84 had recognised such success fees.

B **[92]** *Chai Chee Chin* (*supra*) was a decision by Azmel Maamor J (later FCJ) on a case on land acquisition. Besides *Lua & Mansor* (*supra*), the success fee agreement structure was also judicially endorsed by Zaleha Yusof J (later FCJ) in *Ng Kim Hoong & Anor v. Tetuan YH Teh & Quek* [2015] 10 CLJ 561 which is also a case on land acquisition. Such a fee agreement by its very C nature is such that the actual amount of the success fee can only be ascertained after the trial including a trial for assessment of damages and hence cannot possibly have been paid before the trial.

[93] Under the Legal Profession Act 1976 ("LPA"), an advocate and solicitor may make an agreement in writing with his client respecting the D amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate at which he would otherwise be entitled to be remunerated with such agreement to be signed by the client, see sub-ss. 116 E (1) and (2) of the LPA. I have perused each of the letters of agreements on the contentious business to be done and produced in the bundle of documents (R41) referred to in the table on retainers above and am satisfied that they have all been signed by the plaintiffs.

[94] It is with respect, of course, sheer common sense, that the costs need F not necessarily be paid before they can be claimed by the advocate and solicitor.

[95] It follows, with respect, when His Lordship, Amarjeet Singh Serjit Singh JC in *Lau Yang Kim v. Rescom Australia Sdn Bhd & Anor* (*supra*) held that to "To be entitled to an award of special damages the items constituting G special damages must have been expended before the trial begins", in my view, His Lordship meant that the expenditure of legal fees has been incurred but need not necessarily have been paid.

[96] In the event, the fee structure has been agreed upon before the trial which includes the trial for assessment of damages as has been done in this H case, as can be seen in the letters of agreements led in evidence. These legal costs are actual costs as with respect, correctly held by His Lordship, Hamid Sultan Abu Backer J (later JCA) in *Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd* (*supra*). Even if there is no agreement on legal costs in place before the trial, the legal costs can be still assessed by way of taxation, see I s. 121 of the LPA.

[97] For the same reason, with respect, I would construe the decision by Kamalanathan Ratnam J in *Minty Holdings Sdn Bhd v. JB Properties Sdn Bhd; SK Brothers Realty (Third Party)* when His Lordship decided "*special damages belong to that category of damages that can be calculated into dollars and cents at the date of the trial*" that His Lordship has equated "calculated" to mean quantifiable but not necessarily having been paid at the date of the trial.

(emphasis added)

[98] Such a construction, would harmonise with the cases relied upon by the defendants, with the jurisprudence underlying professional legal remuneration, that legal charges incurred need not have been paid before the trial to be claimable as special damages with support obtained from the line of authorities decided by Justices Azmel Maamor J (later FCJ), Rohana Yusuf JCA and Zaleha Yusof J (later FCJ) as well as the provisions of the LPA mentioned above.

[99] The following costs are often claimed on an indemnity basis as special damages:

(i) costs incurred to seek medical care for *eg*, in road accident or medical negligence cases;

(ii) costs incurred to undertake forensic accounting for *eg*, in cases involving breach of trust or fiduciary duties;

(iii) costs incurred to engage architects, engineers and quantity surveyors to assess and advise on structural damage and modes of rectification for *eg*, in construction cases;

(iv) costs incurred to engage surveyors to carry out survey of boundaries for *eg*, in cases on trespass; and

(v) costs incurred to pay contractors to make good repairs for damage done by the party committing the wrong.

[100] Therefore, why should legal costs be any different?

[101] It is apposite that in a society where the call has always been to abide by the rule of law and not to take the law in your own hands, surely the innocent party who comes to court to seek redress for the fraudulent acts suffered, be indemnified against the costs incurred to obtain the reliefs that the law provides. In this case, by reason of the fraud perpetrated by the defendants, the plaintiffs ought to be indemnified in full.

Lack Of Third Party Proceedings

[102] The second to fifth defendants submitted that there are items claimed that ought not to be borne by them as these pertains to applications/appeals filed by the plaintiffs themselves or applications by the first defendant. The second to fifth defendants have tabulated these items which is reproduced below:

Item	Description
2	Application of security for costs filed by the First Defendant.
3, 4	Application of interrogatories filed by the plaintiffs. The application was dismissed by the Registrar and the plaintiffs appealed to a Judge in Chambers.
6	Application by plaintiffs for the caveat No. 279/2005, No. 280/2005 and No. 147/2007 to be maintained until the disposal of the proceeding.
8	Application by plaintiffs to consolidate Suit No. M1-22-203-2006 and Suit M3-22-45-2008.
9	Application by plaintiffs to consolidate Suit No. 22-203-2006 and Suit No. 52-1571-2006.
10	Application by plaintiffs for the caveat No. 147/2007 to be maintained until the disposal of the proceeding.
13	Appeal filed by the plaintiffs against the High Court's Decision on 01.02.2012 to strike out paragraphs 7.6, 7.7, 9.2 and part of paragraphs 9.1 and 9.3 of plaintiffs' Statement of Claim. The Court of Appeal had allowed the plaintiffs' appeal and ordered costs of RM10,000.00 (please refer to pp. 98-108 of Jilid 1).
17	Appeal filed by the First Defendant against the High Court's Decision on 28.11.2012.
23	Application filed by plaintiffs to include documents as evidence in the Court of Appeal.
41	Application filed by plaintiffs to strike out Notion of Motion for Civil Revision dated 23.10.2018.
42	Application filed by the plaintiffs to appeal against the stay of proceeding granted by the High Court on 06.12.2018.
43	Appeal filed by the plaintiffs to appeal against the Court of Appeal Order dated 07.03.2019.
45	Appeal filed by the plaintiffs to appeal against the Court of Appeal Order dated 07.03.2019.

[103] In arriving at the said judgment, the learned trial judge has found all the defendants to have adopted a *modus operandi* involving dressing up a money lending agreement with sale and purchase agreements and with the defendants conspiring to fraudulently, by way of trickery and cheating, to have defrauded the plaintiffs.

[104] The said judgment was a composite judgment and if at all the defendants and, in particular, the second to fifth defendants wanted a ruling on their respective contributions *vis-a-vis* the first defendant, they ought to have done so by way of third party proceedings pursuant to O. 16 r. 1(1)(c) of the Rules of Court 2012 which provides as follows:

1. Third party notice (O. 16 r. 1)

(1) Where in any action a defendant who has entered an appearance-

(2) (a) ....

(b) ....

(c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form 18 or 19, whichever is appropriate (which is referred to as a "third party notice" in this Order), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

[105] This issue could then have been resolved at the trial together with the main action. They did not do so. And, this court is, therefore, of the view it is not for the court at this closing stage of the assessment of the damages to embark on making a decision on an issue that was not pleaded and for which, evidence was not led and a trial not undertaken.

[106] It cannot be gainsaid that the various applications filed and which had to be met or undertaken by the plaintiffs were all part and parcel of the legal action undertaken to pursue their rights.

[107] Whether the attendances were for case managements or pronouncement of decisions or even for that matter, perusing the papers on the amendment on the notice of change of solicitors, dated 18 February 2008, the advocate and solicitor would still be required to cogitate by applying his mind to the same and be ready for any queries that may be posed by the court.

[108] In *Tetuan Azim, Tunku Farik & Wong v. Tetuan Ong Partnership* [2021] 10 CLJ 258, His Lordship, Ravinthran Paramaguru JCA has these words of advice to advocates and solicitors which all should pay heed:

> It goes without saying that it is expected that counsel who attends case management hearings or mentions should fully apprise himself of the facts and issues of a case in anticipation of assisting the court in the event there are queries.

[109] Wherefore, I find no merit in the defendants' assertion that this court should embark on an exercise to value each and every court attendance.

[110] With the plaintiffs having conceded that there is to be a deduction of RM144,000 for the costs received by them, and save for items 3 and 4 in the table prepared by the second to fifth defendants where the plaintiffs failed in their application for interrogatories with costs yet to be taxed, the issue of double recovery or unjust enrichment no longer arise.

[111] In the circumstances, with the plaintiffs to be indemnified against the legal charges incurred, I award the plaintiffs' claim for the legal charges but in the sum RM2,604,000 by way of special damages.

[112] We now come to the other item being claimed by way special damages.

HLBB Loan For No. 59 Taman Ilmu (RM464,433.16)

[113] Under the said judgment, it was held that the *modus operandi* of money lending on the part of the second defendant included a conspiracy between the defendants to commit fraudulent misrepresentation, that is, to misrepresent by way of trickery and cheating the first plaintiff that the documents he signed, which was prepared by the first defendant, was a money lending agreement but in actual fact the documents he signed was a sale and purchase agreement with a transfer form to transfer *inter alia* the No. 59 Taman Ilmu property to the third and fifth defendants. As a result of the defendants' fraudulent acts, the first plaintiff's No. 59 Taman Ilmu property was fraudulently transferred to the third to fifth defendants who then charged it to Hong Leong Bank Berhad ("HLBB") (pp. 29 and 34 to 36 grounds of judgment).

[114] The LTJ declared the transfer form for No. 59 Taman Ilmu from the first plaintiff to the third to fifth defendants to be null and void (see pp. 35 to 36 grounds of judgment).

[115] The second plaintiff testified that he, who was then only 19 years old, was perforce to obtain a loan from HLBB to settle the loan purportedly owed by his father (the first plaintiff) to the second defendant in the sum of RM225,000 to repurchase their family home, No. 59 Taman Ilmu property lest they be chased out (paras. 6 and 15 PWS1, paras. 6 and 7 PWS3 and para. 5 PWS4).

[116] The particulars and breakdown of the HLBB loan was summarised by the plaintiffs as follows:

(i)	Amount paid by second plaintiff to HLBB:	RM323,263.51;
(ii)	Amount outstanding:	RM141,169.65
	Total:	RM464,433.16

[117] The supporting documentary evidence produced were the HLBB statements from 13 November 2003 to 30 November 2019 (see pp. 3 to 46 Jilid 7) and HLBB statements from 1 January 2020 to 31 December 2020 (R43 pp. 160 to 162 Jilid 3).

[118] During the trial, the defendants' learned counsel suggested that since the plaintiffs did not plead that the transfer of No. 59 Taman Ilmu from the second plaintiff as wrongful, the plaintiffs are not entitled to claim damages for the No. 59 Taman Ilmu property.

[119] However, the part played by the second plaintiff in the No. 59 Taman Ilmu property was in fact expressly pleaded as follows:

> ... when D2 and/or its owners threatened to evict P1 and his family for not settling RM225,000.00 purportedly owing for his No. 59 Taman Ilmu loan account, **P2 was forced to sign a sham** sale and purchase agreement at D1's firm to borrow from HLBB and redeem No. 59 Taman Ilmu from D2 and/or its owners." [see para. 7.3 statement of claim].
>
> (emphasis added)

[120] The above plea was followed by a joint prayer for relief by the two plaintiffs that the transfer of the No. 59 Taman Ilmu property from the first plaintiff to the third to fifth defendants be declared null and void and this prayer was allowed with damages – special, general, punitive and exemplary awarded (see paras. 9 and 9.3 statement of claim).

[121] The defendants also challenged this claim on the ground that the interest levied by HLBB on the loan was not caused by the defendants, is remote and not claimable and submitted that the sum of RM464,433.16 is excessive and unreasonable. Reliance was placed upon the case of *Lai Foh & Sons Sdn Bhd v. Skrine & Co* [2001] 3 CLJ 185; [2001] MLJU 250 [TAB 14, DBOA] is referred to where it was held that:

> I allow the claim under items (a), (b) and (d) because they are direct losses and I am satisfied that the plaintiff had sufficiently mitigated its losses. Item (e) is also allowed because it was incurred in the course of mitigation of the plaintiff's losses whereby the redemption sum was substantially reduced from a huge outstanding amount under the charges. Item (c) is disallowed because the additional costs was incurred in sale of the lands when the plaintiff's decision to sell the lands was caused by (i) its impecuniosity (ii) the demand of the bank as a condition for the withdrawal of the suit and (iii) the substantial outstanding accumulated interest. *It is settled law that a Defendant cannot be required to compensate the plaintiff for any increased loss suffered, solely attributable to its impecuniosity (see @ 239 Charlesworth & Percy on Negligence seventh edition).* With regard to interest, the Plaintiff is entitled to it only from the time when the Plaintiff was deprived of the benefit of part of the sale proceeds which was paid

A to the financial institutions for the redemption of the land titles, *ie*, sometime in the middle of April 1994. The Plaintiff is not entitled to interest from 1983 because the redemption sums are inclusive of accumulated interest.

(emphasis added)

B **[122]** With respect, the case of *Lai Foh & Sons Sdn Bhd* (*supra*) is a case on negligence and breach of duty of care unlike this case which is based upon fraud where the damages would be assessed on an indemnity basis.

[123] With the relief granted in the said judgment after the LTJ had decided C that the No. 59 Taman Ilmu property had been transferred from the first plaintiff to the third to fifth defendants fraudulently and therefore being null and void, this would re-instate the first plaintiff's title and displace any right of the third to fifth defendants to deal with the property, including that to resell it to the second plaintiff. It is a settled law that you cannot pass a better title than the one you have, *nemo dat quod non habet*, see *Sia Hiong Tee & Ors* D *v. Chong Su Kong & Ors* [2015] 8 CLJ 1173 FC. Therefore, the efforts and expenses incurred to recover the No. 59 Taman Ilmu property by the plaintiffs were reasonable and ought to be indemnified and it does not lie in the mouths of the defendants to complain that such efforts were unreasonable when the situation was one brought about by they themselves and which the E LTJ held had been done fraudulently.

[124] In the circumstances, I award to the plaintiffs, the sum of RM464,433.16 incurred by the second plaintiff to recover the No. 59 Taman Ilmu property.

F **[125]** With that we now come to the third item on special damages.

Travelling Expenses (RM16,200)

[126] The plaintiffs claim for travelling expenses incurred by the second plaintiff which have been particularised as follows:

G

No.	Date	Court	Supporting Documents In Jilid 2 (page)	Claim (RM)
1.	18.08.2006	Ipoh High Court	1	100
H 2.	26.09.2006	Ipoh High Court	2	100
3.	26.10.2006	Ipoh High Court	3	100
4.	1.11.2006	Ipoh High Court	4	100
5.	14.11.2006	Ipoh High Court	5	100
6.	15.11.2007	Ipoh High Court	6	100
I 7.	27.02.2008	Ipoh High Court	7	100
8.	09.05.2008	Ipoh High Court	8	100
9.	05.06.2008	Ipoh High Court	9	100

10	12.08.2008	Ipoh High Court	10	100
11	26.08.2008	Ipoh High Court	11	100
12	11.12.2009	Ipoh High Court	12	100
13	29.12.2009	Ipoh High Court	13	100
14	25.03.2010	Ipoh High Court	14	100
15	07.04.2010	Ipoh High Court	15	100
16	14.05.2010	Ipoh High Court	16	100
17	19.05.2010	Ipoh High Court	17-18	100
18	01.06.2010	Ipoh High Court	19	100
19	19.01.2011	Ipoh High Court	20	100
20	10.08.2011	Ipoh High Court	21	100
21	10.02.2012	Ipoh High Court	22	100
22	16.02.2012	Ipoh High Court	23	100
23	24.02.2012	Ipoh High Court	24	100
24	08.03.2012	Ipoh High Court	25	100
25	13.03.2012	Ipoh High Court	26	100
26	25.09.2012	Ipoh High Court	27	100
27	01.11.2012	Ipoh High Court	28	100
28	02.11.2012	Ipoh High Court	29	100
29	12.11.2012	Ipoh High Court	30	100
30	06.12.2012	Ipoh High Court	31	100
31	21.12.2012	Ipoh High Court	32	100
32	27.12.2012	Ipoh High Court	33	100
33	28.12.2012	Ipoh High Court	34	100
34	15.01.2013	Ipoh High Court	35	100
35	28.02.2013	Ipoh High Court	36	100
36	01.04.2013	Ipoh High Court	37	100
37	25.04.2013	Ipoh High Court	38-39	100
38	06.05.2013	Ipoh High Court	40	100
39	07.05.2013	Court of Appeal	41	300
40	31.05.2013	Court of Appeal	42	300
41	11.06.2013	Court of Appeal	43	300
42	04.07.2013	Ipoh High Court	44	100
43	23.07.2013	Ipoh High Court	45	100
44	29.07.2013	Ipoh High Court	46	100
45	20.08.2013	Ipoh High Court	47	100
46	21.08.2013	Ipoh High Court	48	100
47	28.08.2013	Ipoh High Court	49	100
48	03.09.2013	Court of Appeal	50	300

49	05.09.2013	Ipoh High Court	51	100
50	09.09.2013	Court of Appeal	52	300
51	23.09.2014	Ipoh High Court	53	100
52	24.09.2013	Court of Appeal	54	300
53	07.10.2013	Court of Appeal	55	300
54	30.10.2013	Court of Appeal	56	300
55	15.01.2014	Court of Appeal	57	300
56	24.02.2014	Ipoh High Court	58	100
57	04.02.2014	Court of Appeal	59	300
58	02.07.2014	Court of Appeal	60	300
59	23.09.2014	Ipoh High Court	61	100
60	10.04.2015	Court of Appeal	62	300
61	12.01.2016	Federal Court	63	300
62	15.04.2016	Federal Court	64	300
63	07.06.2016	Federal Court	65-66	300
64	11.06.2016	Federal Court	67	300
65	14.06.2016	Federal Court	68	300
66	20.06.2016	Federal Court	69	300
67	09.11.2017	Federal Court	70	300
68	27.04.2018	Federal Court	71	300
69	28.05.2018	Ipoh High Court	72	100
70	30.07.2018	Federal Court	73	300
71	31.07.2018	Ipoh High Court	74	100
72	01.08.2018	Federal Court	75	300
73	06.08.2018	Federal Court	76	300
74	14.08.2018	Ipoh High Court	77	100
75	30.08.2018	Ipoh High Court	78	100
76	24.09.2018	Federal Court	79	300
77	25.09.2018	Ipoh High Court	80	100
78	11.10.2018	Ipoh High Court	81	100
79	08.11.2018	Ipoh High Court	82	100
80	19.11.2018	Ipoh High Court	83	100
81	22.11.2018	Ipoh High Court	84	100
82	23.11.2018	Federal Court	85	300
83	29.11.2018	Ipoh High Court	86	100
84	05.12.2018	Ipoh High Court	87	100
85	09.01.2019	Ipoh High Court	88	100
86	17.01.2019	Ipoh High Court	89	100
87	26.02.2019	Federal Court	90	300
88	22.03.2019	Federal Court	91	300

89	29.04.2019	Federal Court	92	300
90	29.05.2019	Federal Court	93	300
91	14.06.2019	Federal Court	94	300
92	02.07.2019	Federal Court	95	300
93	23.09.2019	Ipoh High Court	96	100
94	23.10.2019	Ipoh High Court	97	100
95	24.10.2019	Federal Court	98	300
96	11.06.2020	Federal Court	99-100	300
			TOTAL	RM16,200 (there is an error in the calculation, see p. 22 PWS1 where it was set out as RM16,000) It has since been clarified by counsel for the plaintiffs that it should RM16,000

[127] The evidence led to support the travelling expenses were:

(i) oral evidence [see paras. 13, 14 and 20 PWS1]; and

(ii) supporting documents [see pp. 1 to 100 Jilid 2].

[128] The defendants did not dispute the trips that the second plaintiff had to make from Sitiawan to Ipoh and to Putrajaya over the years in order to attend to hearings, service and filing of documents. However, the defendants were dissatisfied with:

(i) the amounts claimed, namely RM100 per trip to Ipoh and RM300 per trip to Putrajaya were unreasonable and excessive and there was no documentary proof to support the said claims; and

(ii) the fact that the defendants have settled the costs awarded by the Federal Court in 2017.

[129] I find the plaintiffs' assertion that the second plaintiff who is not a registered taxi or commercial driver and therefore would not issue receipts much less for himself for the trips that he had made, to be reasonable. To my mind, a round trip from Sitiawan to Ipoh at RM100 and RM300 per trip

to Putrajaya which includes petrol and toll charges plus the wear and tear to the vehicle and bearing in mind that the second plaintiff is not claiming for any wage for the trips are not excessive or unreasonable. No evidence was led by the defendants to rebut this.

[130] As for the defendants' assertion that a staff ought to be engaged to perform this task [see lines 495-510 pp. 20 to 21 notes of evidence dated 8 October 2021], no evidence was produced as to how much less it would be.

[131] As to the lack of use of courier services, the plaintiffs cannot be faulted for being careful to serve by hand especially for filings and service of court documents. In the two particular instances of alleged questionable and suspicious claims for courier and personal service, I find the explanation that the documents were eventually filed by the second plaintiff personally which explains both the "Kourier" and the acknowledgment stamps of the High Court at Ipoh as well as the Federal Court in Putrajaya (R42 pp. 15 and 98 Jilid 2) to be reasonable.

[132] In summary, to my mind, the challenge to the travelling expenses claim of RM16,000 premised on double claims, lack of petrol bills, toll receipts and incurring unnecessary expenses by filing/serving documents by hand instead of using the courier service, to be without merit on the grounds that there are no toll for trips from Sitiawan to Ipoh; for trips to Putrajaya payment of toll charges using the Touch 'n Go facility would not yield any receipts and to save costs the second plaintiff used his own car and by driving himself for the trips undertaken as well as to transport the plaintiffs' counsel for the numerous court attendances without any claim for remuneration for the services, is fair and reasonable.

[133] In the circumstances, I would allow the claim for RM16,000 for travelling expenses.

[134] With that we now come to the final head of claim for special damages, which is that for disbursements, which is labelled by the plaintiffs as search and miscellaneous expenses.

Search And Misc Expenses (RM51,518.60)

[135] Under this item, the plaintiffs claim for searches made and miscellaneous expenses incurred as a result of this action. They are particularised and again helpfully presented in a table with the references for the supporting documentary evidence duly set out:

No.	Date	Supporting Documents	Jilid 3 (Pg.)	Amount (RM)
1.	13.10.2003	Ding & Co. Receipt No. 2339	1	9,771.00
2.	01.12.2003	Ding & Co. Receipt No. 7903	2	25,000.00
3.	10.12.2003	Pejabat Daerah & Tanah Manjung Receipt Salinan Sah Borang 14A for 5/15 bahagian Lot No. 2564, E.M.R No. 2359, Mukim Sitiawan	3	20.00
4.	10.12.2003	Pejabat Daerah & Tanah Manjung Receipt Salinan Sah Borang 14A for 5/15 bahagian Lot No. 2563, E.M.R No. 2358, Mukim Sitiawan	4	20.00
5.	10.12.2003	Pejabat Daerah & Tanah Manjung Receipt Search for Mukim Sitiawan EMR 2358, 2359	5	40.00
6.	12.12.2003	Pejabat Daerah & Tanah Manjung Receipt Salinan Sah Borang 14A for 10/15 bahagian Lot No. 2564, E.M.R No. 2359, Mukim Sitiawan	6	20.00
7.	12.12.2003	Pejabat Daerah & Tanah Manjung Receipt Salinan Sah Borang 14A for 10/15 bahagian Lot No. 2563, E.M.R No. 2358, Mukim Sitiawan	7	20.00
8.	02.03.2004	Ding & Co. Receipt No.1310	8	200.00
9.	07.04.2004	Pejabat Daerah & Tanah Manjung Receipt for search on PT 493/2004	9	20.00
10.	07.04.2004	Pejabat Daerah & Tanah Manjung Receipt for search on PT 341/1999 Jil 559 Fol 38, PT342/1999 Jil 559 Fol 39, PT548/1998 Jil 549 Fol 62, PT549/1998 Jil 549 Fol 63.	10	80.00
11.	22.04.2004	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah No PN104828 PT17562, Mukim Sitiawan	11	50.00

A	12.	02.06.2004	Pejabat Pengarah Tanah dan Galian Perak Receipt for search on PN104836 Lot 34919 Mukim Sitiawan	12-14	60.00
B	13.	04.04.2005	Pejabat Daerah & Tanah Manjung Receipt for search on GM3895 Lot 2564, Mukim Sitiawan, GM3896, Lot 2563, Mukim Sitiawan	15	40.00
C	14.	05.04.2005	Pejabat Daerah & Tanah Manjung Receipt for Caveat on GM3895 Lot 2594 Mukim Sitiawan	16	60.00
D	15.	05.04.2005	Pejabat Daerah & Tanah Manjung Receipt for Caveat on GM3896 Lot 2563 Mukim Sitiawan	17	60.00
E	16.	26.09.2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Borang 14A for PT No 17562, HSD Dgs 5664	18	80.00
	17.	26.09.2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah No Pers 28859/1998 Jil. 4230 Fol 95	19	80.00
F	18.	26.09.2005	Pejabat Daerah dan Tanah Manjung Perak Receipt Salinan Sah No. Carian PT1547/2005 Mukim Sitiawan EMR 2358, 2359	20	160.00
G	19.	26.09.2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 4808/1996 Jil. 1113 Fol. 98	21	60.00
H	20.	29.09.2005	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Suratcara No Pers 8907/2000 Jil. 1469 Fol. 19, No Pers 39541/2001	22	140.00
I	21.	16.12.2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 1485/1998 Jil. 1261 Fol 35	23	60.00

22.	29.03.2006	HLBB Receipt for Ling Boon Huat being service charges incurred for photostating cheques no. 652819, 652824	24	55.00
23.	05.09.2007	Pejabat Daerah & Tanah Manjung Receipt for Salinan Sah Suratcara No Pers 507/1993 Jil. 22 Fol. 90	27	80.00
24.	05.09.2007	Pejabat Daerah & Tanah Manjung Receipt for Salinan Sah Suratcara No Pers 1257/1994 Jil. 496 Fol. 33	28	80.00
25.	05.09.2007	Pejabat Daerah & Tanah Manjung Receipt for Salinan Sah Hakmilik Mukim Sitiawan HSM 70/68 Lot 737	29	80.00
26.	07.09.2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Suratcara No Pers 1173/1991 Jil. 715 Fol. 50	30	80.00
27.	07.09.2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Hakmilik CT21329 Lot 10554 Mukim Sitiawan	31	80.00
28.	07.09.2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Hakmilik GRN11777	32	80.00
29.	09.10.2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Caveat on PN104836 Lot 34919 Mukim Sitiawan	33	150.00
30.	25.05.2010	Pejabat Pengarah Tanah dan Galian Perak Receipt for Caveat on PN104836 Lot 34919 Mukim Sitiawan	37	150.00
31.	18.01.2011	Pejabat Daerah & Tanah Manjung Receipt for Caveat on GM3895 Lot 2564 Mukim Sitiawan	38	150.00
32.	18.01.2011	Pejabat Daerah & Tanah Manjung Receipt for Caveat on GM3896 Lot 2563 Mukim Sitiawan	39	150.00

33.	25.07.2012	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 5526/2003	59	80.00
34.	25.07.2012	Pejabat Pengarah Tanah dan Galian Perak Receipt search for GRN23576 Lot 34 Mukim Pekan Sitiawan	60	40.00
35.	24.10.2012	Chan & Associates Receipt No. 17790 Payment for notes of evidence	61	1,840.00
36.	05.12.2012	Pejabat Daerah & Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563, GM 3921 Lot 766 Mukim Sitiawan	62	120.00
37.	05.12.2012	Salinan Sah Dokumen Receipt for Carian PT 3305/2012, Receipt RM100.00 for Carian PT 3306/2012	63-64	100.00
38.	06.12.2012	Pejabat Daerah & Tanah Manjung Receipt Register High Court Judgment dated 28.11.2012 Eksibit LPH-BAfidavit LPH affirmed 18.1/.2013. Also found as Eksibit A Afidavit LPH affirmed 21.12.2012	65	100.00
39.	14.12.2012	Pejabat Daerah & Tanah Manjung Receipt for search on GM3895 Lot 2564 Mukim Sitiawan, GM 3896 Lot 2563 Mukim Sitiawan, PM1728 Lot 25864 Mukim Sitiawan	66	120.00
40.	08.01.2013	Pejabat Daerah & Tanah Manjung Receipt for search on GM 3895 Lot 2564 Mukim Sitiawan, GM 3896 Lot 2563 Mukim Sitiawan	67	80.00
41.	13.12.2016	Pejabat Daerah & Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563 Mukim Sitiawan	93	80.00

42.	29.06.2017	Pejabat Daerah & Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563 Mukim Sitiawan	94	80.00
43.	13.08.2018	Receipt No. 0382 for Wong & Wong legal fees Inv 1497	95-97	10,000.00
44.	29.08.2018	Pejabat Daerah & Tanah Manjung Receipt for private caveat on GM 3896 Lot 2563 Mukim Sitiawan	102	150.00
45.	29.08.2018	Pejabat Daerah & Tanah Manjung Receipt for private caveat on GM 3895 Lot 2564 Mukim Sitiawan	103	150.00
46.	29.08.2018	Pejabat Daerah & Tanah Manjung Receipt for search on presentation No. 730/2017 & 792/2017	104	120.00
47.	14.09.2018	SSM e-Info Services Invoice for search on Golden Star	108	15.30
48.	09.10.2018	Pejabat Daerah & Tanah Manjung Receipt for search on GM 4506 Lot 13754 Sitiawan, GM 4510 Lot Mukim Sitiawan Mukim 13758	116	80.00
49.	09.10.2018	Pejabat Daerah & Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563, PM 2850 Lot 34419 Mukim Sitiawan	117	120.00
50.	10.10.2018	Pejabat Pengarah Tanah dan Galian Perak Receipt for search on PN157895 Lot 1073 Bandar Lumut, PN54842 Lot 5045 Mukim Pengkalan Baharu, PN104836 Lot 34919 Mukim Sitiawan, PN6604 Lot 26829 Mukim Sitiawan, PN6608 Lot 26833 Mukim Sitiawan, PN6612 Lot 26837 Mukim Sitiawan	118	240.00

51.	10.10.2018	Pejabat Daerah & Tanah Manjung Receipt for search on GM 1830 Lot 3021 Mukim Lumut, GM 2163 Lot 4400 Mukim Lumut, GM2335 Lot 4470 Mukim Lumut, PM152 Lot 6597 Mukim Lumut, PM1573 Lot 6604 Mukim Lumut, PM738 Lot 6643 Mukim Lumut, PM742 Lot 6580 Mukim Lumut, GM 3895 Lot 2564 Mukim Sitiawan, GM 3896 Lot 2563 Mukim Sitiawan, GM 4506 Lot 13754 Mukim Sitawan, PM2850 Lot 34419 Mukim Sitiawan	119	440.00
52.	11.10.2018	Pejabat Daerah & Tanah Manjung Receipt for search on GRN117151 Lot 14832 Mukim Lumut, GRN45311 Lot 36943 Mukim Sitiawan, GRN45312 Lot 36945 Mukim Sitiawan, GRN45313 Lot 36944 Mukim Sitiawan, HSD34443 PT6805 Mukim Sitiawan, HSD 34444 PT6806 Mukim Sitiawan, PN28346 Lot 18119 Mukim Sitiawan, PN314504 Lot 51793 Mukim Sitiawan, PN354444 Lot 584 Pekan Sitiawan.	120	360.00
53.	18.01.2019	SSM e-Info Services Invoice for search on Check N Heal Sdn Bhd	137-142	15.30
54.	20.04.2020	HLBB Receipt for Ling Boon Huat (second plaintff's) Bank Statement A/c No. 3784001016	157	12.00
		TOTAL		RM51,518.60

[136] Save for deductions that were to be made for the orders for costs awarded and paid, I observe that there is no challenge to the expenses incurred under this head of claim.

[137] I will, therefore, similarly for the reasons given that the plaintiffs are entitled to be indemnified, allow this claim.

[138] With that I now proceed to deal with the issue of general damages. A

General Damages (RM1,000,000)

[139] The plaintiffs seek to claim a sum of RM1,000,000 by way of general damages.

[140] Reliance was placed upon the authority of the Court of Appeal in B
Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] 1 LNS 500 where it was held:

> [14] It is trite that a person injured by another's wrong is entitled to general damages for non-pecuniary such as his pain and suffering, hardship, discomfort, mental distress and loss of amenities of life. There C
> is no standard rule to measure the damage in such cases. The Courts usually determine the amount based on a fair and reasonable standards, free from sentimental or fanciful standards, and based upon evidence adduced.

[141] The plaintiffs led evidence that he suffered tremendous hardship, D
discomfort and mental distress for more than 25 years since that fateful day when the first plaintiff, an ice-cream seller, stepped into the second defendant's office in 1996 to borrow RM5,000. Thereafter, the third defendant brought him to the law firm of his sister (first defendant). Together, as found by the learned trial judge, they conspired to defraud the first plaintiff E
of all his properties. From the filing of the action on 18 August 2016, the plaintiffs had to undergo more than 15 years of litigation, including exhausting all appeal process and three further reviews at the Federal Court.

[142] During the 15 long years, the plaintiffs had to spend a lot of their time, energy and effort to: F

(i) attend numerous meetings with their solicitors to give and take instructions;

(ii) to attend to mentions, case managements and hearings in court; and

(iii) to work on numerous affidavits. G

[143] Evidence was led that the stress of this case had resulted in many quarrels between the plaintiffs and their family members. The first plaintiff had to tend to his cancer-stricken wife while at the same time run up and down to attend to this case.

H

[144] The second plaintiff testified that his marriage broke up by reason of this case although the defendants produced his former wife as a witness who testified that their marriage broke down by reason of her having been assaulted by him on three occasions. His wife left him leaving their young son under his care.

I

[145] The plaintiffs asserted that at the tender age of 19 years of age, by reason of this case, the second plaintiff was forced to go to the first defendant's firm to sign agreements to obtain a loan from HLBB to "re-purchase" the No. 59 Taman Ilmu family home so as to avoid eviction and ever since, he was unduly burdened with the responsibility of servicing the HLBB loan. The financial constraints saw him having to personally drive his lawyers for the numerous court attendances, do their own filing and service of court papers, the inference to be drawn was so as to save costs.

[146] This court accepts that it must have been a harrowing experience fraught with emotional distress for the first plaintiff to leave his cancer-stricken wife each time he had to call at his solicitors' office to go through numerous affidavits to address the numerous applications before the trial could even commence, some of which, were frivolous but put up by the defendants to bring undue pressure upon the plaintiffs and an example given by learned counsel for the plaintiffs was having to fight off the defendants' application for security of costs not once but twice.

[147] Evidence was led that even though bedridden, and in her dying moments, the first plaintiff's wife insisted that the plaintiffs should not give up in their effort to seek justice in court. The first plaintiff's regret is that his wife did not live long enough to see justice being done.

[148] In claiming for RM1,000,000, the plaintiffs were guided by the High Court authority of *Eu Sim Chuan v. Kris Angsana Sdn Bhd* [2007] 7 CLJ 89; [2007] 1 MLJ 734 where Azmel Maamor J (later FCJ) awarded the plaintiffs their claim of RM1,000,000 for general damages for mental distress and hardship in seeing their bungalow home damaged by the works carried by the defendant developer next door. His Lordship's words bear reproduction:

> **8. General Damages For Mental Distress, Hardship, etc.**
>
> There are ample evidence that the damage to the property had caused severe mental distress and hardship to the plaintiffs thereby resulting in the health conditions of the 2nd plaintiff to deteriorate drastically. The whole members of the plaintiffs' family had faced great hardship, getting transferred from one house to another. The 1st plaintiff, who had personally supervised the construction of the house, must be feeling very painful and sad to see the house being damaged due to the activities carried out by the defendant. I allow the claim of RM1,000,000 under this Item.

[149] The case of *Eu Sim Chuan* (*supra*) went up on appeal to the Court of Appeal and the appeal was dismissed, see *Kris Angsana Sdn Bhd v. Eu Sim Chuan & Anor* [2007] 4 CLJ 293. On the damages for RM1,000,000, His Lordship Suriyadi Halim Omar JCA (later FCJ) said:

> [44] We found no error in the findings of the learned judge when he had ordered RM1,000,000 also as part of the general damages. Practitioners are well aware that general damages represent losses which are not easily

quantifiable, with losses in the like of mental stress, hardship *etc*. as suffered by the respondents, also falling under the heading. There was ample evidence to show that the health of the 2nd respondent indeed had taken a dive, due to the continuous and persistent mental distress of seeing their home slowly disintegrating, followed by further hardship when moving house.

[150] Having defrauded the plaintiffs of their properties through trickery and cheating as found by the learned trial judge, refusing to obey court orders which saw them being found guilty of contempt of court on more than one occasion and in the process taking the plaintiffs through 15 years of litigation with its attendant feelings of anxiety as and when an application is being pursued, heard and seemingly disposed of only to be met with an appeal and yet more applications with more appeals and in the process, with both plaintiffs losing their wives, one through disease and another through divorce proceedings, I am of the view that the RM1,000,000 sought by the plaintiffs is reasonable for all the mental distress and hardship suffered by them.

[151] With that we now come to the final head of damages that was awarded in the said judgment, that is punitive and exemplary damages.

Punitive And Exemplary Damages (RM1,000,000)

[152] Punitive and exemplary damages are one and the same, whereby the terms have been used interchangeably, see para. 33 *Sambaga Vallis* case (*supra*).

[153] In *TAZ Logistics Sdn Bhd v. TAZ Metals Sdn Bhd & Ors* [2020] 5 CLJ 426 at p. 437 para. 64, His Lordship, Darryl Goon Siew Chye J (now JCA) accepted that the upper limits of exemplary damages should not be more than three times of the basic damages awarded. His Lordship cited with approval the decision of Lord Woolf in *Thompson v. Commissioner Of Police Of The Metropolis* [1997] 3 WLR 403 at p. 418 which is reproduced below:

In deciding upon what should be treated as the upper limits for exemplary damages we have selected a figure which is sufficiently substantial to make it clear that there has been conduct of a nature which warrants serious civil punishment and indicates the jury's vigorous disapproval of what has occurred but at the same time recognises that the plaintiff is the recipient of a windfall in relation to exemplary damages. As punishment is the primary objective in this class of case it is more difficult to tie the amount of exemplary damages to the award of compensatory damages, including aggravated. *However in many cases it could prove a useful check subject to the upper limits we have identified if it is accepted that it will be unusual for the exemplary damages to produce a result of more than three times the basic damages being awarded* (as the total of the basic aggravated and exemplary damages) except again where the basic damages are. (emphasis added)

[154] And, His Lordship, Darryl Goon Siew Chye J went on to observe that:

> [57] As for exemplary damages, based on the authorities, although there are principles which would guide a court in the assessment of the quantum of exemplary damages, there are no hard and fast rules. Much would depend on the circumstances and factual matrix of the case.

[155] The plaintiffs submitted that the conduct of the defendants prior to the said judgment was sufficient for the court to award punitive damages in favour of the plaintiffs. And their conduct post the said judgment was no better. They were found guilty of contempt of court not once by twice, the second time by the Federal Court which was satisfied beyond reasonable doubt that the defendants and their lead counsel were guilty of contempt of court.

[156] The facts that obtain in this case calls to mind the following words of His Lordship, Mohd Hishamudin Mohd Yunus J (later JCA) in *HSBC Bank Malaysia Bhd v. Tirathrai Sdn Bhd* [2009] 1 CLJ 286 to be particularly apt in the circumstances of this case:

> [87] ... But the present case has a special aggravating element and that is the manner the act of disobedience was done by the respondents. It has an element of subtlety and cunningness. By engaging lawyers and other professionals and invoking the legal process, the acts have an outward appearance of professionalism, sophistication and legality. Such a modus operandi often makes the victim and, indeed, the judicial and legal system itself, helpless. Because of the subtle method employed and the ruthless utilisation of the court process, it is often an uphill task for the aggrieved party to convince a court of law that, behind the facade of 'legality' employed by his adversary, he is in fact being victimized or being mercilessly and unjustly deprived the fruits of his litigation; unless the victim is a person of means (like the plaintiff in the present case, being a bank with financial resources at its disposal) and able to employ an able prosecutor.

[157] Here the victims, the plaintiffs, are not persons of means. They were most fortunate to be able to have a set of very kind solicitors who obviously took their professional calling of that of an honourable profession very seriously and were prepared to provide their able services first and to seek payment in full later.

[158] Considering all the facts and circumstances and the conduct of the defendants pre and post judgment, the plaintiffs claim for a further sum of RM1,000,000 as punitive or exemplary damages against the defendants is reasonable so as "to teach the wrongdoer that tort does not pay' (per Lord Devlin in *Rookes v. Barnard And Others* [1964] 1 All ER 367).

[159] The sum total of the award of damages is:

(i) Special damages:			
(a) Legal Fees			
(i) Retainer	-	RM2,345,000	
(ii) Refresher	-	RM403,000	
		RM2,748,000	
Less costs paid		RM144,000.00	
			RM2,604,000
(b) Hong Leong Bank Bhd loan for the No. 59 Taman Ilmu property			RM464,433.16
(c) Travelling Expenses			RM16,000.00
(d) Search & Miscellaneous Expenses			RM51,618.60
Sub-total			RM3,135,951.76
General damages:			RM1,000,000
(ii) Punitive and exemplary damages:			RM1,000,000
Total			RM5,135,951.76

Interest

[160] The plaintiffs seek interest on the damages awarded at 5% p.a. from the date of the filing of the writ until full realisation.

[161] The defendants assert that the plaintiffs are not seeking the recovery of a debt where they are being kept out of the use of money and, therefore, interest should not run from the date of the filing of the writ but from the date of assessment after the quantum has been ascertained.

[162] However, sub-s. 11(1) of the Civil Law Act 1956 which is reproduced below provides the court with the power and discretion to order interest to run from the date when the cause of action arose in an action for damages:

> *In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.*
>
> (emphasis added)

[163] Pursuant to O. 42 r. 12 of the Rules of Court 2012, interest can be allowed at 5% p.a. on the judgment debt as from the date of judgment until the date of full realisation, the judgment debt being the judgment sum made up of damages and pre-judgment interest thereon, see *Trans Elite Equipment Rental Sdn Bhd v. PSC-Naval Dockyard Sdn Bhd* [2003] 4 CLJ 270; [2003] 1 MLRH 706; [2003] 4 MLJ 30 (refd).

[164] However, just as what was adjudged in *Eu Sim Chuan v. Kris Angsana Sdn Bhd* (*supra*) I allow interest on the damages awarded from the date of the filing of the writ until full realisation. However, instead of 8% p.a. the interest rate shall be 5% p.a. as determined by the Right Honourable Chief Justice *vide* Practice Direction No. 1 of 2012.

Apportionment Of Liability Among The Five Defendants

[165] The final issue is whether the damages ought to be apportioned as between the defendants *inter se*. The said judgment does not say so. In *Lembaga Kumpulan Wang Simpanan Pekerja v. Edwin Cassian Nagappan* [2021] 7 CLJ 823 FC, the Federal Court held that a judgment against more than one judgment debtor would mean that the liability is joint and several. As I had mentioned earlier, the second to fifth defendants could have availed themselves of the provision of s. 10 of the Civil Law Act 1956 and O. 16 r. 1(1)(c) Rules of Court 2012 for this issue to be determined at trial. They did not. I, therefore, decline to accede to the second to fifth defendants' prayer for the liability of the defendants to be apportioned at this stage without the benefit of this issue having been tried.

Conclusion

[166] In the upshot, following the trial on assessment of damages claimed, I asses the damages payable by the defendants to the plaintiffs to be RM5,135,951.76 with interest thereon at 5% p.a. from the date of the filing of the writ (18 August 2016) until the date of full realisation with costs.